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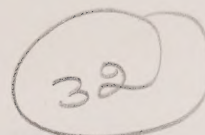












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# Official Report of Debates (Hansard)

Thursday 27 January 1994

# Journal des débats (Hansard)

Jeudi 27 janvier 1994

**Standing committee on  
finance and economic affairs**

**Comité permanent des finances  
et des affaires économiques**

Pre-budget consultations

Consultations prébudgétaires



Chair: Paul R. Johnson  
Clerk: Lynn Mellor

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## STANDING COMMITTEE ON FINANCE AND ECONOMIC AFFAIRS

Thursday 27 January 1994

The committee met at 1008 in the St Clair/Thames/Erie Rooms, Macdonald Block, Toronto.

## PRE-BUDGET CONSULTATIONS

**The Chair (Mr Paul R. Johnson):** The standing committee on finance and economic affairs will come to order.

ONTARIO SECONDARY SCHOOL  
TEACHERS' FEDERATION

**The Chair:** Our first presentation this morning is from the Ontario Secondary School Teachers' Federation, Jim McQueen, the executive officer, and Larry French, the legislative researcher. You may proceed.

**Mr Jim McQueen:** First off, let me thank you for the opportunity to address the committee. We have given you the material you have in front of you, three items: One is our response to the Fair Tax Commission; another is a document called Adequacy, Democracy and Equity, which deals with what we would think would be a fair funding model to fund the educational system; and finally, a small pamphlet on the confederated school boards. It did not make sense to us to repeat or redistribute the report we had made to the Fair Tax Commission, but let me assure committee members that we have it available and would be more than glad to provide it to any who might be interested.

I'm going to deal with the section on the residential tax and the recommendations; those can be found on pages 5, 6 and 7. Larry will deal with the balance of the report.

As you know, the significant recommendation by the Fair Tax Commission is to shift educational funding from the local tax parties to the personal income tax. We would oppose this recommendation for three reasons.

It is our feeling about income tax that it is probably one of the easiest taxes to avoid in that, depending on your wealth etc and the kinds of contributions you make and the deductions you have, a good deal of tax can be avoided. The residential tax to a large extent cannot be avoided. It is there, and there are no deductions: One pays what is required.

Also, it is our belief that if the educational tax were removed from the residential, we would see the municipalities very quickly expanding their activities, so there would be a good chance that the residential tax would continue to increase as the municipalities began to expand their activities.

Finally, we question whether the government itself in these times can afford to lose any form of tax. While the tax is collected on a municipal basis, it does offset the cost to the government. It would be our argument that by removing it the government would lose a good deal of tax money.

The other issue around residential taxing is the question of local control. Here too we would support maintaining the residential tax system, as one of the strengths

of the educational system is the ability of localities to impact on the educational system. If no money were collected at the local but simply went to the provincial, our feeling is that it would result in a totally centralized and provincial educational system, with local people having great difficulty in having any impact on the system.

If you remember back to the Edmonton commitment made by Mr Davis, the commitment was that 60% of funding of education would be maintained by the provincial government and 40% would be raised by the local people. Since that time there's been a significant downloading of educational responsibilities to municipalities: Funding from the provincial government has fallen to 34%. We understand there is a significant tax revolt at the local level, but the impetus for this is that the government continues to require of the educational system more and more responsibilities but is providing less and less funding to meet them. We would argue that there should be a return to that 60% funding and that in conjunction with the federations, the school boards etc the government should begin a series of meetings to see how that funding could be restored.

The other concept, the pooling of industrial and commercial assessment, we would oppose. One of the effects of pooling would mean that the separate system, in addition to the public system, would have equal access to the industrial and commercial assessment. The effect of that right at the moment would simply be to increase the problems of the public boards of education. It would mean a loss of revenue by the public boards that would flow to the separate boards. If there is a problem in the separate system in terms of funding, that is a government responsibility. It was the government that decided to fund the separate system through to OAC, and to ask the public taxpayers to now pay this burden—the original projection of costs was supposed to be \$40 million and it's now well over \$2 billion. There was something wrong with the accounting when the cost of the separate system was projected.

We have another recommendation on confederated school boards that Larry will refer to.

There is a suggestion in the Fair Tax Commission report that over-ceiling expenditures should be limited to residential, that you cannot increase the industrial and commercial assessment. We cannot see the rationale for this. Much of the over-ceiling expenditures are necessary, and we can't see the wisdom of arguing that only residents should pay that additional cost. It may be more politically viable, in that it tends to be the residential taxpayers who organize themselves in opposition and there may be some control mechanism. But if we're going to continue with the need for over-ceiling expenditures, we think the whole community, including the corporate and business sectors, should help to pay those.

In conjunction with that is a recommendation that there be a uniform mill rate for industrial and commercial



assessment right across the province. We recognize, and I think the Fair Tax Commission discovered, that the assessment, especially business and industrial-commercial assessment, was all out of whack: that various communities were taxing at various levels and that there'd even been tax breaks given to businesses etc to move into the community.

If you come up with a uniform tax base, our argument is that the effect on those areas outside the Golden Horseshoe would be devastating. Obviously, it is easier to do business, say, in the Metropolitan Toronto area given the services that are provided, all the way from schooling to sewers to municipal services etc. If you have a uniform mill rate and it is the same cost of doing business in Metropolitan Toronto as it is in Kenora or Wawa, our argument is that a lot of that business the rural and northern areas depend on would start to flow into the Metro area and create incredible problems in those regions, which are already losing businesses. This would do nothing more than to give impetus to that movement.

**Mr Larry French:** On page 8, we address the questions of progressivity and fairness in the tax system. The Fair Tax Commission has provided a lot of data that have helped us understand wealth distribution and perhaps some of the problems associated with it. One of the key figures they have shown us is that the wealthiest 20% of our population owns 74% of the wealth. The tax system, in its redistributive function, is not working at this point: We have a very wealthy class, a disappearing middle class and a relatively impoverished underclass. We think the tax system should be working more efficiently to help address this problem.

Neil Brooks talks about the social difficulty this situation, if perpetuated, brings with it. You're almost into a situation like pre-revolutionary France, with a very privileged élite with all of the privileges and none of the responsibilities and obligations.

The second and perhaps equally important consideration in building in more fair and progressive taxes is the revenue crisis. Statscan has pointed out, as we reference on page 8, that 50% of the deficit-debt pressure comes from the shortfall in that taxation revenue over the decades has not kept pace with growth in gross domestic product. As the economy has grown, the tax base has not grown with it and therefore we're into colossal deficits. We see it as a revenue crisis, not a spending crisis, as it has been defined recently.

In order to bring in progressivity, we support the concept of the wealth transfer tax. Of the OECD countries, only Canada and Australia don't have one. We're greatly out of step on this one. It doesn't have to be an onerous tax, an onerous burden, but it can bring back a significant amount of revenue. It addresses the growing proportion of very wealthy holdings, estates, that are insulated from the tax base. We therefore recommend, number 7, that we implement a wealth transfer tax quickly.

The personal income tax also, under the recent federal amendments, has become less progressive. We've had the amazing situation in which the upper-income portion of the tax base has actually been reduced. This is very

difficult to justify in a time of revenue crisis. We support the Fair Tax Commission's recommendation of a more progressive base with more progressive brackets, an increased number of brackets, with the highest marginal rate kicking in at an income of \$250,000, not at the \$59,000 threshold that is there now. This would be more sensitive to income.

#### 1020

On page 11, we get into the corporate tax contribution to provincial and federal revenue. It's very low at this point, at 7%. This has caused a fair amount of discussion. The commissions that have studied the system have found that the corporate taxation is riddled with inequity and is incapable of producing the revenue we need to avoid our deficit crisis. Paul Martin is looking at this aspect of the tax base and suggests there might be changes in store. We need them.

We've quoted a lot from Neil Brooks's critique of the Fair Tax Commission report and we support the general line of the critique Brooks has made of the recommendations. The Fair Tax Commission has been very careful in the whole area of corporate taxation: It doesn't want to drive business out of Ontario. Brooks talks about that and suggests that there are other reasons why corporations make decisions to locate, not just the taxation level. He considers it to be a relatively minor factor.

He also recommends a new way of collecting the tax in this era of the multinational corporation. It's in use in California now. It's very difficult with the multinationals to be sure they are allocating a proper portion of their taxes to the jurisdictions in which they operate. The formulary apportionment method seems to be an improvement over what we're using now. The corporate tax in Ontario, for multinationals at least, would be based on the share of the worldwide economic activity of these corporations that is generated in Ontario. This formula is harder to squeeze out from under. At the time of NAFTA, we needed tax agreement in this area among all the NAFTA nations. We therefore support, in recommendations 9 and 10, the measures to impose a corporate minimum income tax and recommend a formulary apportionment type of tax.

Finally, on page 13, we talk about the confederated school boards. It's part of the governance that goes slightly beyond the mandate of fair taxation or the finance and economic affairs committee, but it does have significant financial implications. We're bringing them to your attention. In a quick, what I'd call shorthand method, we've brought forward the cost of implementation at the secondary level only since 1984. It's relatively expensive: \$2.5 billion can be attributed to the expansion of separate school funding. I don't think people anticipated that it would be quite that expensive. In the meantime, we have all the costs associated with running two parallel systems.

We spend about \$14 billion on education. If a miracle occurred and we effected a 10% saving, we'd save \$1.4 billion; a 5% saving would be \$700 million; a 1% saving, which I think is feasible, would be \$140 million. We're talking big money if we can find a better way to govern and spend our dollar on education.



**The Chair:** Thank you very much for your presentation. We have about five minutes per caucus.

**Mr Gerry Phillips (Scarborough-Agincourt):** I thank the OSSTF for, as usual, a thoughtful presentation. What you haven't talked much about, though, is just where we are right now in terms of the implementation of the budgets and what's actually happening. One of our roles here is to provide some recommendations on what's realistic in terms of expenditures for 1994-95, among others. Can you bring us up to date on what is actually happening across Ontario in terms of the implementation of the expenditure control program and the social contract, what you're expecting in the next year and whether you've any advice for the committee in terms of what we should be looking at for funding?

**Mr French:** Jim will have thoughts on this; he's on one of the sectoral task forces. The restraint program has already dug in very deeply, as I think you're aware. We pointed out to the government in the spring that under the previous restraint program, the famous January announcement and so on, the boards had already lost about 3,000 teachers and 2,000 support workers, that we'd already cut back. This cutback will be vastly accelerated as the dollars get tight this year and as the contracts allow boards to address this situation in the spring to a greater extent than they've been able to so far.

We've heard that the boards are targeting another \$500 million in savings beyond the social contract target. That will be devastating. The Treasurer has been hinting that even his promise of 1%, 2%, 2% might not be in the cards; it's hard to tell just what he will come up with. Therefore, boards are in great duress economically, no doubt about it. They need all the help they can get.

**Mr McQueen:** Actually, the effect in the educational system I don't think has been seen and won't be seen until the spring of this year because of the way they staff schools etc. You've got locked in a 4.7%, 5% reduction in staff, which is going to mean an increase in class sizes. You've got massive loss of programs, social workers, speech pathologists etc. It's having a devastating effect on the educational system. Let's even assume there was fat in the educational system. Whatever fat there was is gone. They're going to be making very difficult cuts.

The Metro board is struggling so much—I think the question of the Pepsi-Cola deal came up yesterday. The Board of Education for the City of Toronto entered into a deal with Pepsi-Cola for the direct reason that it gives it money it needs to run its system. That is the explanation given. If the current kind of funding continues, I fear that not only education but most of the social services are going to have to hold bake sales to meet the shortfall between the money required and the money being supplied by the provincial government.

**Mr Phillips:** In the final analysis, it's what's happening in the classroom that we are all interested in, and it's difficult here at Queen's Park to get a good sense of that, so if the OSSTF or anybody else is tracking that for us, that would be useful. Right now my interpretation is that there will be roughly 5% fewer staff per pupil, and that means to me that the class size will increase by 5%. But that assumes you can't move people out of non-classroom

positions into classroom positions; that may ameliorate it. We all have the responsibility to track this and see what's really happening, with a corresponding responsibility to not be alarmist when we shouldn't be alarmist, so I ask you to do that for us.

1030

**Mr McQueen:** I agree with you, and we are trying to do that. Our instruction to all of our bargaining units is that they have to comply with the law and the 4.75% reduction has to take place, but it is having a profound effect. As you know, it doesn't necessarily mean that each class will increase by 4.75%. In fact, there will be tremendous fluctuations, because there are certain programs, for the trainable retarded and those kinds of programs, where you can't increase class size, so that has to be taken up by other sections of the program.

Probably the greatest effect will be at the academic level. Those class sizes will shoot up because a lot of the other class sizes can't be changed, irrespective of how many teachers there are. We are trying to track that and we'll try to provide the information. The schools start their staffing process in February and it has to be done by May 31, so by May 31 we will have developed hard data on exactly what the impact has been.

**Mr Gary Carr (Oakville South):** I agree that as a result of the social contract there has been, in a lot of areas, deterioration in services. To be very clear, what our party advocated is that there would have been a salary cut, 2%, 1%, 3% or whatever, but there would have been no time off; similar to what we did as MPPs. We haven't asked you to do anything we haven't already done. We froze our pay in 1990 and then cut it. MPPs in 1996 will make less than they did in 1989. I think we're in the same ballpark as teachers in terms of salary. I don't even know what mine is, to tell you the truth, with the tax-free portion. I don't even see it; my wife looks after it. We have not asked you to do anything we didn't do. People don't realize that, and we get lumped in with the federal politicians: They got increases and so on and everybody thinks our pensions are similar to theirs.

That's the way I would have proceeded. It would have been no time off but salary cuts, whatever the amount was. Had that come in, we wouldn't have had the deterioration in services. It would have been even across the board. It would have been the nurses, the teachers and everybody. I just wanted to make that clear.

**Mr McQueen:** It would have saved a hell of a lot of meetings, too.

**Mr Carr:** And we might have saved what we spent on meetings. I think that's the way it should have been done. There wouldn't have been deteriorating service. Teachers wouldn't have liked it, nurses wouldn't have liked it, or doctors, but we would not have had the service cuts.

I want to talk about the salary issue. The other day I read an article that quoted Ralph Klein out in Alberta, something like, "With a twinkle in his eye, he said he's going to province-wide bargaining because school boards aren't tough enough to deal with teachers." I take it the OSSTF would in favour province-wide bargaining.



**Mr McQueen:** No, our policy is to be opposed to it. The answer's fairly long, but generally we are opposed to it. Bill 100 was specifically put together to allow for local control, and bargaining rights are owned by the locals, not owned by the provincial. The only time we get involved is if the local assigns it to us. We think that reflects local autonomy. There have been a lot of arguments about whether teachers are able to whipsaw or whatever because of various increases, but my assessment of the negotiation process is that it's a fair process. We come in with our demands, they come in with their demands, and then it works its way through.

Teachers are seen now as fat cats of the system, but a teacher at the top of the bracket is \$65,000 in Metropolitan Toronto.

**Mr Carr:** They make more than us. I thought you were the same, but we're lower.

**Mr McQueen:** That's the gross amount, but it's very easy to reduce that to well below \$40,000 simply with the pension contributions and tax contributions, and I'm not arguing we shouldn't pay that. That gross is what teachers require to live in this society. Frankly, the LICO figure is \$30,000, but how anybody in Metropolitan Toronto can live on less than \$30,000—they really have to scrimp and save to do it.

**Mr Carr:** On your point about the 60% financing, if the province is to take more responsibility for that, it should also have the corresponding responsibility for—80% of the total goes to salaries; I know that's administration too. But if they are going to take more responsibility, they should have more responsibility. My feeling is that we need to have clear lines of authority and responsibility. Whoever pays the buck is the one who negotiates about salaries. You can't have it the way it is now, where they blame school boards but the funding comes from the province.

I agree in some respects that the province should take more. My big problem with going to the 60% financing is that I honestly, truly think the municipal politicians would say about the property tax, "There will be a gap, and we can jump in." That isn't to say all municipal politicians would do that, but any time politicians of any stripe see tax shifted to another level of government, we don't see a reduction. They jump in, "Now we can up our property tax for worthwhile causes." Tonks would come in and say it's for these capital projects, and there are always worthwhile causes.

If the province goes to 60% financing, it should definitely have more responsibility in terms of the negotiations over 80% of its cost, which is with the teachers. I agree with you, but you can't on the one hand ask the province to pay more of it and at the same time say, "The responsibility is still going to be at the school board level." That's how I would handle it.

**Mr McQueen:** I don't think we're arguing that. They can control that very simply by putting controls on over-ceiling expenditures. If they put a cap on it, they can stop that very quickly.

**Mr French:** The share of instructional salaries for boards across the province is close to 50%, between 40%

and 50% for teacher instructional salaries.

**Mr Carr:** The 80% is total salaries, including caretakers, administrators etc.

**Mr French:** That's right, and your central board office. But the teacher instructional portion, including principals, guidance and everybody in a school, is 50%.

**Mr Mark Morrow (Wentworth East):** Jim, Larry, good morning. I want to touch on something you brought up called a confederated school board. It's rather interesting. Your line, "It's an idea whose time has come," I'm probably inclined to agree with. In Hamilton-Wentworth, specifically Wentworth East, my riding, there are roughly five school boards. Can you give me a rough idea of the cost saving? And will it work?

**Mr French:** We think it will work. We've proposed a model which is a trimmed-down version of what we have now. You would amalgamate everybody in the Hamilton-Wentworth area and do a very spare trustee offering; in other words, there would be a maximum number of four trustees representing each of the blocks involved in the board, including French if you have a francophone population. The administrative services we'd want trimmed right down, and the delivery at the local school level we think can be much more efficient. In some areas you've got economies of scale, but in others you're going to be able to combine classes, curriculum production, all that sort of thing.

In the Metro area, where they've talked about combined services among the public boards alone, they're looking at \$55 million in annual savings. We think that where there's a will to do this kind of cooperation—and it's already starting. There is cooperation between public and separate boards; in northern Ontario it's starting. But we think the process can be accelerated and that there will be significant built-in efficiencies throughout Ontario. We've got a lawyer looking at it to make sure all the constitutional protections are there and respected.

1040

**Mrs Karen Haslam (Perth):** It's an interesting brief. One of your comments was, "We can't afford to lose any more tax money," and you've come forward with suggestions about increased funding from the corporate income tax. You want Ontario to continue its measures to impose a minimum corporate income tax and close tax loopholes. You want us to relieve the pressure and capture more revenue from high-income contributors. In light of your suggestions about raising taxes when other people and other businesses and other associations have come saying, "We don't want you to raise any more taxes"—in fact, a lot of people want us to lower taxes—I find your presentation extremely interesting.

Given, as Mr Carr has indicated, that 80% of a budget in a school board is usually payroll, would you agree with what has been put forward here, that if we are not going to go for increased taxes, if we have to combat the deficit again and look at another reduction, would you agree with a 5% across-the-board cut, as was recommended here?

**Mr French:** We're into freezes and cuts; that's been the law for the last few years. The salary thing is very



flat at this point, so we're effectively there already. We didn't agree with the wage cut approach to the social contract, for MPPs or anybody else. We felt it was economically damaging. We wanted tax reform. We wanted to go at this so that those who were still gaining a fair amount of income, including corporations and so on that were still profitable, would contribute, even if it's a special surtax during these tough times. Those who could would pay. But this one's a very blunt cleaver, and we've heard reports from all over the province of people, low-income people too, who are being very hard hit by this approach to the whole thing.

**Mrs Haslam:** You would still rather do it this way than with a straight percentage cut.

**Mr French:** No, we didn't agree with that public sector cut. We thought it took fiscal and tax reform so that everybody in society shared, not a wage cut or this kind of cut, which depresses economic activity. Informet-rica calculated that over the three years of the social contract, the implication is 70,000 jobs because of the diminished economic activity. This is a heavy burden to pay in an already high-unemployment society. Therefore, fiscal and tax reform we felt would capture the revenues people needed to get out of this deficit difficulty.

**Mrs Haslam:** You're looking at revenues rather than—

**Mr McQueen:** I'm a politician too. Larry isn't. If you think I'm going to tell you how much I support a 5% decrease, it's not going to happen. We would be opposed to that. You could take everybody's salary and reduce it and reduce it and reduce it, but you're going to have to start to look at the effects of that.

What we are arguing, and we think the statistics are overwhelming, is that the income earner has been paying a greater and greater share of the cost of running the government while in other sectors of the economy their costs have been shrinking. Even within the individual, those at the top of the scale are paying less than what people are paying at the middle or the lower.

I know tax increases are not popular, but we would argue that somebody has had one hell of a good public relations firm over the last 15 years and they've sold a pretty good bill of goods. Somebody's going to have to take that.

Teachers don't take their money and put it in a sock and hide it under the bed. They're in the communities, they're spending, they're buying the houses, they're buying the refrigerators etc. Keep taking that money away from them and the local economies are going in the dumper. I'm going to Cornwall tonight; they've got 50% unemployment down there. The only people working are the public servants, and to suggest you're going to reduce their salaries doesn't make sense.

**The Chair:** I thank the Ontario Secondary School Teachers' Federation for its presentation.

ONTARIO ARTS COUNCIL

**Ms Gwenlyn Setterfield:** My name is Gwenlyn Setterfield, the executive director of the Ontario Arts Council. With me are Mr Michael Woods, a member of the board of the Ontario Arts Council, and Susan Cohen,

the director of arts discipline programs at the council.

We would like to thank you very much for the opportunity to speak with the committee this morning. I'm particularly pleased to see that at least three members on the committee I personally have met before. We certainly all know Ms Haslam, who was the former Minister of Culture and Communications and a great supporter of the arts in Ontario. Mr Phillips we met last year at this committee. Mr Carr I met at a dinner for business and the arts in Oakville a couple of years ago. Good morning.

We would like to make a brief presentation. Each one of us will speak to some of the issues involved, and we hope to leave plenty of time for questions from each caucus.

For the benefit of the members who perhaps do not know the Ontario Arts Council, we are an agency of the Ministry of Culture, Tourism and Recreation, and our budget this year is \$44 million, about one tenth of 1% of the provincial budget.

The council is often perceived either as dealing with a lot of individual artists who are going to go off and write poetry in the south of France or, at the other extreme, supporting those elitist arts for the richest people in the province. In fact, the scope of what the Ontario Arts Council deals with is much wider than that.

We make an investment every year in approximately 900 organizations in 362 communities around this province. We also support approximately 1,800 individual artists each year. The average grant to an individual is \$2,400, so you can see that our artists are not living in the lap of luxury on the grants they get from the Ontario Arts Council. Most of that money goes as small grants to allow artists to do projects in the community, for the most part.

The Ontario Arts Council deals primarily with the not-for-profit sector, but we also deal with the cultural industries, with the commercial sector in one way or another, and with the volunteer sector. We would like to make the point very strongly that this is really all one sector, one viable microeconomic sector, if you like, in the panoply of economic activity in this province.

The artists move back and forth between the commercial sector and the not-for-profit sector, and organizations—publishers being a perfect example, but there are design groups and so on—that work both in the commercial cultural industry sector and in the not-for-profit sector. They move back and forth.

You may have noticed recently a number of articles about the fact that the presence of a healthy and viable commercial theatre sector in Toronto, for example, and a very thriving commercial film sector in Ontario are being fed by the pool of highly creative talent that is developed in the not-for-profit sector. It is in fact the commercial producers who are making those acknowledgements themselves, Mr David Mirvish being one who has been quite vocal on that subject.

1050

I would like to add a comment about the discussion we just heard with the teachers about levels of wages and the effect of the social contract on the lowering of wages. In



the arts sector, the artists are looking still for a living wage. They have not yet got to the level of a living wage where you can start to talk seriously about what kinds of contribution they can make back to the community. The average dancer in Ontario makes about \$16,000 a year. On average, most artists earn less than the average for the whole province of Ontario. It's somewhere in the low 20s. When we talked to the artists around the province in terms of our strategic planning, they weren't whining and whining about wanting more grants and more support and all of this sort of thing. They just said, "Give us a living wage for the work we do."

That is the message the Ontario Arts Council has been trying to make to the government. In fact, we're bold enough to say that we would like to have added to our budget this year \$3.9 million to do the kinds of activities that will help the artists meet the marketplace: to initiate more touring around the province, more interchange between regions, to allow the artist more access to information and service in terms of accessing foreign markets—the craftspeople, for example—to assist the designers. I think Ms Cohen will speak about that further.

The second point I'd like to make is that the artists are really on the leading edge. Of course everybody has said for decades that the arts are on the leading edge, but in a very practical, economic sense the arts sector here is a model for the new economy people are talking about. This is small, local, labour-intensive economic activity all around the province. We have heard this morning about the relationship of public sector funding to private sector involvement. The arts have been doing that for years; the arts are a model for the involvement of private and public sector activity. The arts in fact are providing many of the best fund-raisers to the education sector, to the health sector. We're training them. We're paying them \$15,000 a year and then they're going off to work for the hospital or the local college or whatever it is. And if the teachers' federation wants to know how to run a bake sale, boy, can the arts ever tell them how to do it.

The third area we are particularly concerned about is the arts for young people. Again it makes some connection with what we've heard this morning. Last year, for \$2.5 million that the Ontario Arts Council put into arts and education programs in this province, 750,000 students had some connection, meeting, experience with artists in the schools. This is not entertainment; this was not money we put in to entertain the students for half an hour or an hour so the teachers could go off and do something else. For the most part, this is involving the students in creative activities in the schools which help those students to develop some very hard skills that are among the basics they are going to need in the next decade and the next century. Through the arts experience they learn in the schools, they develop focus, problem-solving skills, a commitment to excellence, self-discipline, an understanding of the world and world cultures around them.

We did make this presentation to the Royal Commission on Learning about these issues of arts and education and through that presentation made a very interesting connection with the chambers of commerce in Ontario. We found that the sets of skills which hard research

shows are developed through the arts are the same kind of skills that business is identifying as being essential for students in the next century.

To sum up my opening remarks, the artists are looking for a living wage; we are part of and a model for the new economy, the labour-intensive, highly educated, highly creative and partnership kind of economy; and the arts are essential for our young people in terms of developing their skills for the coming decades.

I know this committee is interested in the Fair Tax Commission and those recommendations. We have not had the resources to look at that report in detail and comment on how it affects the sector we're concerned about, except for the discussion around the melding of the two taxes, the GST and the PST. This would result in the provincial tax being applied to books, and we support the publishing and booksellers and reading coalitions to protest against the tax on reading. Canada is one of the few countries in the world, since the advent of the GST, which taxes its own books.

I would now like to turn to Mr Woods, who will make some statements from the point of view of the volunteer in the arts community.

**Mr Michael Woods:** I'm Michael Woods, a board member at the Ontario Arts Council. In real life, I'm an accountant.

Over the last two or three months I've had a number of comments from certain of my friends and colleagues that the arts organizations in Ontario are not particularly well managed. The first point I'd like to make today is that they are. I have a number of clients both in the non-profit arts sector and also in the other cultural industries. Arts organizations are creatively managed. They are perhaps not traditionally managed in a business sense, but of our 900 organizations funded by the Ontario Arts Council, I believe three have closed their doors during the last recession, which is a remarkable record given the difficult fund-raising environment they've had to work within and given the cutbacks from every government source except for the Ontario government. The Canada Council has cut back quite dramatically in its funding to the arts, and many municipalities have felt the pinch and have cut back as well. I'd like to go on record now as saying that in my experience and from our statistics the arts community is in fact well managed, in a very different sort of sense.

We do create jobs. The 129 performing arts organizations we fund have total revenues of \$161 million, approximately one third of which is provided by the government sector. The government contribution is leveraged through private sector revenues, box office receipts and a very large volunteer contribution. There were 107,000 volunteers in Ontario in the arts community last year.

All of this—the government contribution leveraged through these other sources—creates jobs, economic and social benefit in large and small communities throughout Ontario. I'm from Sault Ste Marie originally and spend much of my vacation time back in the Sault. The Ontario Arts Council funds many touring theatre presentations in the north. Sault Ste Marie has a very dynamic art gallery,



some of which the local steelworkers don't particularly like all that much. The only reason for the art gallery in the Sault is because of the Ontario government.

**Ms Susan Cohen:** My name is Susan Cohen, and I am the director of arts discipline programs at the council. I want to give you some very specific examples of how artists contribute to creating wealth in this province, and not only creating wealth but creating a presence for this province throughout the province, outside this province in the rest of Canada and outside the country.

You may have read the January 10, 1994, article in *Maclean's*, which was titled "How the Canadian Design Industry is Losing Out." This is a very important article and it made a very important point, that many Canadian companies ignore the importance of design, and it shows in their inability to capture a fair share of the international marketplace.

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We at the Ontario Arts Council have recognized the importance of design for a very long time, and two years ago instituted a new program with some major funding from the Ontario government which is expressly looking at the creation of innovative design projects and their connections with industry and the marketplace.

I wanted to draw your attention to one particular example where artists are working with industry, but also working with industry to address social and economic problems, particularly working with unskilled workers. That is a small grant that we made just last year to Michael Fortune, who is the most recent winner of the \$20,000 Bronfman Award, the most important award in crafts. Michael Fortune has developed a project called the community economic design project in which he is actually developing furniture design and small products which can be made by unskilled labour forces in economically distressed communities. In fact, the first chairs have actually been designed; the prototypes are available. This kind of model will now be taken not just throughout Canada, but I know it's being looked at in the Third World as well.

Another example of the importance of the role of our funding and the way it can generate wealth and more revenues is an example of new administrative models that the arts community, perhaps because it has existed on marginal funding for so long, is incredibly adept at. You heard Gwen and Michael talk about the importance of touring, and many companies have their own what they call "booker." This is an employee whose function is to go out and get engagements for a company. Generally, one company has one booker. This is quite costly. In the case of dance companies particularly, which have a very large international marketplace, there are enormous costs associated with it.

About three years ago, four dance companies in Toronto got together and decided that rather than have one booker each, they would have one booker for the four of them. They developed, through the assistance of the Ontario Arts Council and with the assistance of Ms Haslam's ministry at the time, a model called Four Dance; that is, one booker employed by the four companies.

The grant from the Ontario Arts Council in 1992 was just \$20,000. I'm delighted to tell you that in 1993 and 1994 and in the years coming up, 1995 and 1996, this small grant of \$20,000 is going to generate over half a million dollars in artistic revenues and tours.

It has led to the Toronto Dance Theatre recently having a one-week, completely sold out engagement in New York to rave reviews from the critics at probably the most prestigious dance house in North America. They are about to engage on a three-week tour of Germany and Poland. The company hasn't even arrived, but the bookers in Germany and Poland are actually talking about bringing them back after this year as well.

Next year the companies—Desrosiers Dance Theatre, Toronto Dance Theatre and others—are going to be touring Japan and China. It is the companies that are our presence, the presence of this province, abroad.

**Ms Setterfield:** I would just like to sum up the major points and add a couple of figures.

We sponsor every year a large trade fair which brings together the volunteer and professional presenters of touring activity around the province to see showcases and meet the artists and meet the bookers and meet the promoters. This year that activity generated about \$2 million in artists' fees in the province.

Finally, another anecdote. Just within the last couple of years, one of the cabinet ministers of this province was in the Middle East—he tells this story himself publicly—trying to promote Ontario's industry. An official of one of those countries said to him, "If you really want to have some credibility here, send us Maureen Forrester." He was somewhat taken aback and said, "Why Maureen Forrester?" He said, "Because Maureen Forrester is your most prestigious and accomplished singer, and when we see your accomplished artists, we know that your other products will be of the highest possible quality."

Our artists are good ambassadors. They're a good investment, but I do want to say that I can sit here for a long time and spin out numbers for you—we have very good hard data which we're quite willing to share with you about the economic value of the arts to this province and to this country—but at the end of the day, the arts are really about the soul of this province.

Despite all of the misery and unhappiness, the economic recession and all of the problems we face, when I go around the province I hear people telling me they really do want the arts in their community. They want it for themselves, they want it for their children and they want it for the old people. They want that experience of the arts, because it is just something that is important inside. It's something you can't measure in numbers. It's something you can't really describe but you feel it, and they try to tell us that. They feel it, they want it, they're asking for it, and that's really what it's about at the end of the day.

**Mr Carr:** Thank you for a fine and thorough presentation. As usual, you give us a very good insight.

I have a question about what you hear may be happening in terms of the funding. Do you hear that it's going to be frozen or do you have any sense from the govern-



ment about what's going to be happening? Have you got any feedback whatsoever in your dealings with the government and the ministry?

**Ms Setterfield:** The ministry is always very supportive and it has said that it will try to protect the budget of the Ontario Arts Council. We're hoping for \$3.9 million extra, less than the cost of a postage stamp per capita. The government has been supportive and has said it will try to protect the budget.

**Mr Carr:** What they're saying is that Finance is the ministry that will ultimately do it and so on, but, "We're around the table pushing for you." Is the ministry doing that with all the programs or is it making allocations and saying, "Yes, you're priority number one or two or three?" Do you have any sense of that at all?

**Ms Setterfield:** No, I don't. The ministry has said it is concerned about the agencies, and we are one of a group of agencies in the ministry, and it is trying to protect the budgets of the agencies.

**Mrs Haslam:** Backing up what has been said, I disagree with you on one thing. I think you do need to give us the hard data on the spinoffs and on the revenue generated, because I can remember seeing—I looked for it—a one-pager that said, and it was something I tried to stress the last time I went with the budget to the ministry, "This is what you spend on the arts, but this is the spinoff. This is what you give us and this is the millions and millions of dollars that come in in revenue," and that's not counting the additional job revenues and all of that. I know those facts are out there and I know there's a one-page sheet.

**Ms Setterfield:** I thought it was in your package. If it's not, we'll certainly get it to you.

**Mrs Haslam:** There's another one I've seen that shows us, in a business manner, the income versus the output, what government puts in and what comes back to government in taxes, what comes back to government in increased revenue within the community. There's another one that came out of the Ontario Film Development Corp—I know it's not the arts council—that said, "For the amount of money we spend and put into film, we make billions of dollars in Toronto alone out of that money."

I think that's important for this finance and economics committee to look at; that's what we're looking at. I can sing the praises of "We wouldn't be Canada without our artists; we wouldn't be Canada without our culture; we wouldn't be Canada without our libraries; we wouldn't have the communities we have without these people too." But look around you. I'm the woman here, and Irene Mathysen, but you're talking to a finance committee and I think it's important that you bring those types of facts and figures to the finance committee.

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What was your budget three years ago? You said it's \$43 million now, and to me that is quite a drop.

**Ms Setterfield:** It's \$44 million.

**Mrs Haslam:** It's \$44 million now, and \$63 million sticks in my mind from a few years ago. What was it a year ago and what was it two years ago?

**Ms Setterfield:** Last year it was the same as this year, and this of course is the net—we haven't included the social contract. The budget was frozen last year; the year before that it went down by 1%; the year before that was when we had a \$7.5-million increase. We've never been over \$45 million.

**Mrs Haslam:** I beg your pardon. I was thinking of TVO.

**Ms Setterfield:** We'd love to have the TVO budget.

**Mrs Haslam:** TVO has the \$63 million; the arts council has the \$43 million.

**Ms Setterfield:** It would be equitable. We serve the whole province too.

**Mr Phillips:** I appreciate the presentation and I agree with your concern. There's always a danger in tough times that we can squeeze these things and I very much appreciate that this isn't what we should be doing. Your definition of life is important, and if we just go through life trying to accumulate things and trinkets, then we're not really enjoying life. You add a lot to the real fabric of the province and I want to congratulate and thank all the volunteers who I know just devote their hearts and souls to it. I appreciate it very much.

The challenge is that we are all into tough economic times. Almost regardless of merit, it's tough to respond to each thing as individually as you'd like, and what you're asking for here is something like an 8% or 10% increase in the budget. It's often easy in opposition to say, "We'll certainly support that," but realistically there's not going to be an across-the-board 10% increase in budgets, as worthy as yours might be.

My only thought is that what we're seeing in other areas is some of the most creative financing imaginable. The construction sector realized it's going to have to figure out some new way of spending money, so it's going to things like toll roads and private sector sewage treatment plants that get funded by water rates that they get somebody else to raise. We're seeing a plethora of creative uses of finances. In my opinion, some of it needs to be fully experienced and exposed. The teachers were just in here, and one of the ways they've been able of help to phase things through is by an enormous holiday in payments to the teachers' pension; that will be picked up in two or three years.

What I'm saying is that you have an awful lot of people in your organization who know finances really well and I think you'd be well advised to be looking at some highly creative solutions. I don't know what they are, but you are "competing" for resources against other sectors that are looking at highly creative uses of finance. We will be as helpful as we can in making sure you get your fair share of the expenditures, but have you exhausted those creative financing areas?

**Ms Setterfield:** I don't think we've exhausted them; I think we have a lot of good examples. The council itself, for example, this year entered into an agreement with TVO because we fund video artists and there is a huge problem of distribution. For a very small amount of money strategically put in the pot with TVO's small amount of money, we were able to get a series of pro-



grams which are being distributed, showing around the province the work of those artists we're funding. We're looking at a lot of those kinds of things.

**Mrs Haslam:** We've already been doing it for years.

**Ms Setterfield:** We've had a lot of partnerships.

**The Chair:** I thank the Ontario Arts Council for making its presentation.

#### CANADIAN IMPERIAL BANK OF COMMERCE

**The Chair:** The next presentation is by Mr Tim Whitehead, representing the Canadian Imperial Bank of Commerce.

**Mr Tim Whitehead:** Thank you, Mr Chairman and members. As an economist, I can say that it's always a great thrill to be invited back anywhere, and it's also a very unusual thing. I do appreciate the honour of being invited back once again this year. I understand I've been given 15 minutes.

**The Chair:** No, you've got a half-hour.

**Mr Whitehead:** Fifteen minutes for my preamble, I guess.

**The Chair:** However you want to divvy up your time.

**Mr Whitehead:** I'm going to try to be fairly brief. I've been asked to talk about the economic outlook and my impressions of the report of the Fair Tax Commission. I'm going to be extremely brief on the economic side. In the handout, the first page shows a comparison of the Ministry of Finance's economic forecast released in November and our own economic forecast, that is, the CIBC economic forecast for Ontario, released just yesterday. You'll see that there are considerable similarities; not much difference.

We're a little bit more optimistic about consumer spending, and considerably more optimistic about the housing market picking up in 1994. We'd highlight that as one area where we're a little bit more hesitant about our forecast. We're certainly more optimistic than the province, but the difference is not great.

I want to talk very briefly about the fiscal projections for the province, because this has been an area of discussion in the past. I have been asked several times about it. My own sense is that the economic forecasts of Treasury and Economics, and latterly the Ministry of Finance, have not been too bad when forecasting for the year ahead. When they released their forecasts in the budget, the forecasts for the year have generally been fairly accurate on the economic side.

Page 2 of the handout I've given you shows a couple of comparison charts; the line is what actually happened and the dots are what the forecast in the budget indicated would happen. You see that they miss a little bit, but if economists could really foresee the future perfectly, we'd all make so much money we'd be concerned about the wealth tax. In fact, their forecasts have not been bad on the economic side.

On the revenue side, however, I would point out that they've been a little bit less accurate. I've listed some of the complicating factors as far as forecasting revenues go, but my general sense is that they've tended to be too optimistic in the past. Whether this is a systematic

problem related to the growth in the underground economy or just changing economic structure, I don't know and I'm not in a position to give you a really solid opinion on that, but my gut feel and my opinion every time the budgets have been tabled has been that they've been a little bit overoptimistic on the revenue side.

The suggestion I would make, and I call it a recommendation, is that in terms of fiscal projections when you're looking out over several years, the government should not assume real growth of anything greater than 3%. I note that in the economic projection the province has going out beyond this current fiscal year, it is considerably more optimistic than 3%, and I think that's a bit like hoping you'll win the lottery so it will solve your debt problems. You can't assume growth much stronger than 3% on a continued basis, and I think budgeting would do well to take that more cautious fiscal, economic forecast into account.

I want to devote most of my time to talking about the Fair Tax Commission. I have three major, fundamental problems with the Fair Tax Commission.

The first is that its focus was almost entirely on fairness. Now, that came from its terms of reference, and to be fair to the commission, it took into account a lot more than fairness. They considered the underground economy, they considered the economic impacts of tax changes and they went beyond what the terms of reference specifically indicated.

Even so, I think it would have been a very different report had they been looking at what was good for the economy and what was fair in a broader sense than the one they chose. I have a particular problem with their choice of definition of fairness. They indicate basically two principles: horizontal equity, that people in like situations should be taxed equally, and progressiveness.

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Some of the commissioners, in particular the co-chair of the commission, indicated there really wasn't much good analytical substance to the choice of progressivity. They really did not address the problems of progressivity as a guiding principle in fairness in taxation. Aside from everything else, this leaves the commission's report open to some criticism and weakens their case.

The second thing is that I'd suggest the analysis was weak in a number of places. I think this partly arose because of the way the commission tried to go about its work. They were trying to—and I think one of the commissioners mentions this—balance competing views and see if they could find a middle ground. That, in many cases, quickly degenerated into brokering, trying to get agreements on principles.

In trying to do that, I think they stepped away from doing rigorous analysis. In particular, as I mentioned, I think they were weak on the analysis of progressiveness in the tax system. The employee health tax was given short shrift, given the problems that I'm going to talk about in a few minutes. One area that I thought was particularly poorly dealt with was the taxation of alimony and support payments.

The third comment I have, and this is more a substan-



tial comment about the commission, is that a lot of the report's—I didn't bother counting them up—recommendations suggest or are directed at taxing savings, either directly or have the impact of taxing savings and discouraging savings. I can go through and list them, but the big problem with that, totally aside from whatever definition of fairness you want, is that if there is a sure thing in economics, discouraging savings discourages your long-term growth.

However fair you might view it, if you hit RSP contributions, if you try and reduce the returns from capital, if you try and make the tax system more progressive, you're going to discourage savings and you're going to discourage your long-term growth, which is the source of your long-term hope for jobs. I view that as probably the biggest shortcoming of the commission's report.

I sound very critical. I do think the commission accomplished a couple of things. I think it created a worthwhile debate about the tax system in Ontario. As some of the commissioners indicated, they changed their position as a result of the analysis and the studies and the review they conducted, so I think something positive came out of it.

I'm just going to deal with a few of the areas of recommendations in my comments. You'll be happy to know I'm not going to deal with all 135 of them.

The first area is the recommendation about opening up the budget process. I'd like to endorse, in broad terms, what the commission said in terms of opening it up, creating more discussion, getting more feedback and removing some of the secrecy that surrounds the budget-making process presently. I think the secrecy is unnecessary. I think there are few opportunities to benefit from inside knowledge or advance knowledge of what might happen in the budget. There are a few, to be sure, but they can be handled. In the broad sense, there's not an awful lot that cannot be dealt with publicly as opposed to secretly.

Secrecy causes a lot of problems. In the runup to the last few Ontario budgets, there have been fluctuations in the financial markets related to uncertainty. What will the deficit be? What will the numbers be? What will they do with taxes? Those fluctuations have had a cost and it's an unnecessary cost, as I indicated.

In addition, I think the black-box nature of the budget-making process leads to some scepticism about the functions of government, how well it's done or how fair it is. I think that has contributed in some small measure to the underground economy, that people say: "I don't understand this thing. I think they're doing stuff behind my back. I don't feel so bad about holding back on my taxes."

Opening up the budget process is a very good recommendation of the commission. I would add to it, as my perennial recommendation, that you've got the Fair Tax Commission now and I think it would probably be worthwhile to have a Fair Expenditure Commission that would open up the expenditure side, perhaps on a piece-by-piece basis, to public scrutiny. I notice they've done that in Nova Scotia. There they've used accounting firms

to do audits. I think you could do well to have a more public process to deal with the expenditure side.

One of my hobby-horses is the employee health tax. I found it kind of ironic reading the Fair Tax Commission report. They do a very good job of documenting the problems with the employee health tax, but then they go on to recommend changes to make it a bit broader. The fact is that while most taxes have some problem—there's never a perfect tax—the employee health tax is a bad tax on almost every single count. The only thing that can be said for it is it raises a lot of money. It's a hidden tax. It's tax on employment. It's got to be the most bizarre thing, that here we are with extremely high unemployment and what we do is put a tax on employing people. I can't imagine a more bizarre situation.

Also, the Fair Tax Commission documents fairly clearly that the burden of the employee health tax falls mainly on labour. I would argue, for a number of reasons, it falls disproportionately hard on the lower end of labour income. If you're making minimum wage you bear more of the burden, the incidence of that tax, than somebody making \$400,000 a year, because the person making \$400,000 a year has more clout, has more mobility and, as the tax commission pointed out, the least mobile factor is the one that bears most of the incidence, in most cases, of tax.

My own calculation—I've included a chart—is pretty rough, but it suggests that the incidence of the tax is moderately progressive over the lower income range but extremely regressive when you get to higher income levels. It's a bad tax for a whole host of reasons, but I recognize that it's a huge chunk of money in the budget and you can't just do away with it because an economist tells you that it's a bad tax. Rather, I would argue that you should de-emphasize it and work to reduce it. Certainly a number of provinces which have wage taxes have done that.

I note that the commission totally overlooked the fact, when it mentions that Quebec has a payroll tax, that in the last budget Quebec also introduced a tax on non-earned income because they argued that it was totally unfair to put the burden of health care, at least partially, on wages and leave unearned income alone. The point is that they were recognizing implicitly the regressive nature of the tax, and the fact that the commission overlooked it is a little bizarre. I think it should be de-emphasized. I would argue that we were better off with a premium system than we are with employee health tax.

Just one final point here; I know I've gone overlong on this point. After the employee health tax was introduced in Ontario and people pointed to Quebec and said, "Well, they've got one, it won't be a big problem there," the differential in the unemployment rates between Ontario and Quebec narrowed from about 4.2% to a little over 2%. There are a whole bunch of other factors there, but I would argue that a tax on employment contributed to that problem.

I'm going to be fairly brief on my other comments.

On the retail sales tax: One of the impressive results from the commission was that it did recommend harmonizing with the GST. It's all the more impressive because



I know that a number of the commissioners were adamantly opposed beforehand and even the working group was quite divided on it. I think this is a good idea. It's obviously going to be held in abeyance until some resolution at the federal level as to what's going to happen with the tax, but if it's possible to harmonize the two sales taxes, I think it should be done.

I also believe it would be best to broaden the sales tax base, to include as many goods and services as possible, but at the same time to try and address the obvious regressive nature of expanding the tax base through the income tax system.

**Environmental taxation:** The working group did a lot of work on what should happen to the tax for fuel conservation and talked about the taxation of gasoline and motor fuels. I don't have really too much of a complaint with some of their recommendations. One I would suggest is that a far easier way to reduce automobile emissions would be simply to require that at the time of renewal of the licence for a car you show proof that you've had an annual tune-up. A number of states in the US do this. It would add a little bit of cost to the car owners but it would certainly reduce pollution in a far more efficient way than almost any tax we could think of putting on it. It's said that about 50% of the car pollution comes from about 10% of the cars, so if you had tune-ups you would do far more than any tax system to reduce car pollution.

On property tax reform, a couple of caveats to the recommendations from the commission. Obviously most people seem to agree that funding public education through the property tax system has a lot of flaws and doesn't have much logic, except it seems to work within the system. I would argue that the commission's recommendation to restrain local property tax funding of education to 10% of the provincial grant is probably not a good idea. You should leave the local communities more leeway to decide if they want to fund more for education.

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As I've said elsewhere, if the county of Perth wants to put more money into its education and believes that's the best thing for its youth, it should be allowed to do so, totally aside from what the province decides to do. I also believe that a tax base at the local level should be smaller than it is now, but having tax funding for education at the local level probably keeps local taxpayers on the alert and school administrators on the defensive.

On the property tax itself, the commission said it received almost two thirds of its submissions on the basis of the property tax. I think the reason is that when you get a property tax, it's very personal; it's your house, it's your property. There's some arbitrariness there, and I think that causes people more problems than almost anything else.

My recommendation, and it's fairly simple and doesn't get into a lot of detail, is just to keep the system as simple as possible. If you can have province-wide rules, I was intrigued by the idea of taxing on the basis of house square footage and land square footage as a means of applying the property tax. That's simple, it's straight-

forward, and allows the message to be put through to the home owners.

Finally, on university tuition, the Fair Tax Commission really didn't talk about it, but it struck me that a useful idea would be to encourage the Council of Ontario Universities proposal of GOALS, guaranteed Ontario assistance loans to students. The idea behind it is that universities be able to charge tuitions, have more freedom to charge their tuitions, and more of the funding would come through loans to students. In fact loans could go beyond just covering tuitions; they could cover more of the education costs to students.

The effect would be to reduce the requirement for the province to fund post-secondary education in the province. To the extent that more of that cost is put upon the student—be it university, college or what have you—in a sense you're capturing some of the future benefits that accrue to that student as having participated in post-secondary education.

In a roundabout sort of way, to the extent that you reduce how much the province has to contribute to post-secondary education, you're also putting a bit more of the burden of public education on the students, who in effect, having graduated from high school, are one of the key beneficiaries of public education. To the extent that you can shift some of the funding from applying it to universities by means of using GOALS to putting that funding into the public education system, I argue that you're coming closer to taxing the benefits arising from public education.

Let me stop there. I think I've left you a few minutes for questions.

**Mrs Irene Mathysen (Middlesex):** I want to go to your third page. You talk about a concern about taxing savings. That flies in the face of what I'd heard in terms of the effect of people socking away too much money. Specifically, when people in the car industry were talking about the health of the economy and the problems with selling cars, they said that their worst competitors were RRSPs and that there were no purchases of new cars in the months of January and February because everyone was topping up their RRSP contribution. That was a problem for them and it affected the economy generally in a negative way. Could you bridge the gap between what I have come to believe and what you're saying here?

**Mr Whitehead:** That's a good question. In the short term, increased savings really just take money out of the economy, at least in the initial sense, because it's less money spent on consumer goods, and that's what we typically see as driving the economy. But in the longer term, if you have a country that does not save very much, it almost invariably is a country that does not grow very quickly.

Aside from the short-term impact of encouraging savings, there's a bigger question of long-term growth, and that really relates to how much savings you have in the economy. There's a tradeoff there, but all the economic studies I've ever seen indicate that it's a bad tradeoff to say, "Let's discourage saving now and let's get some more spending out there," because you usually



pay for it in fewer jobs and less growth over the longer term.

**Mrs Mathysen:** It's because those savings are used by institutions to invest, so we have to encourage our institutions to invest in Ontario, to invest in Canada rather than offshore, and create growth and opportunity here.

**Mr Whitehead:** I would agree with that, but I would also point out that most of what we're talking about here in terms of the tax incentives is not institutions. They're individuals, and we're really trying to encourage them to save. There's also the byproduct that if you don't get people to contribute to their RRSPs and save for themselves, there's a much higher pension bill down the road for the country as a whole.

**Mrs Mathysen:** Speaking of the pension bill, some of the projections are that we are simply not going to be able to provide for the needs of people who are currently paying into pension plans like Canada pension, much less future generations. Is that your sense?

**Mr Whitehead:** The problem with the CPP is it's always been a pay-as-you-go system and it was never fully funded. We were always living on borrowed time. So as we go on into the next century, the problem with the pay-as-you-go system is you've got to have virtually the same amount of money coming in as going out. As the population ages, that means there's more money going out; you've got to have more money coming in. Just by demographics, that means the contribution rates are going to have to rise; but rise they probably will.

The other assistance for seniors comes from the tax system, the general revenue system, and I would argue that's more at risk than anything else.

**Mrs Mathysen:** I understand that the CPP's been traditionally underfunded. What on earth was the rationale of past federal governments for doing that? Obviously they knew there was a problem that was going to hit them between the eyes.

**Mr Whitehead:** I could be very cynical about this and say it's nice to hand out money and promise that you'll collect enough money down the road, but I think that's a large portion of what happened here. It was nice to be able to say right up front: "Look at this. We've got a new program that's going to be able to contribute to seniors and, by the way, the tax rate is pretty low too."

**Mrs Mathysen:** Sort of desperately hoping you're not in power when you hit the wall, or when the wall comes up and hits you.

**Mr Whitehead:** Again to be cynical, I don't know that I've ever met a politician who desperately hoped they weren't in power. They hoped it was somewhere down the road.

**Mr Phillips:** We've listened to various economic forecasters and they've kind of bracketed the government's numbers for 1994. I take it that you would be saying they're not far off and that what they are projecting is defensible.

I appreciate your comments on fiscally prudent approaches in terms of looking at revenue. Something has changed in the economy and it's more difficult to predict

revenues than it was in the past, for whatever reasons, and I accept that.

In terms of your recommendations on openness, I think everybody supports openness. It's ironic to all of us, though, that we've got virtually no information that we're working with right now. We don't have a clue of the government estimate of expenditures, and normally we've got something. I don't think this committee has ever operated in more of a vacuum than we're operating in right now, for timing reasons, I guess, but we don't even know the transfer payments. We are going to be somewhat impotent, in terms of our recommendations next week because of that. Having said all that, we're all saluting openness. In reality, I'm not sure of what hasn't been available in the past and what will be available, but we'll see at the end of this process.

The harmonization we've heard a lot about. Virtually everyone who's presenting to us seems to be trending in that direction.

1140

The university tuition one is interesting in that your recommendation is fairly consistent with where the government would like to go: How do you find new sources of revenue? One way you find new sources of revenue is you get it off your books and on to, in this case, tuition. How do you get people willing to pay more tuition? You give them this GOALS thing. Essentially it's a way to keep spending money without having to tap the taxpayers. I would speculate that those sorts of things will see some government support.

Your recommendations on property tax reform: You're actually supportive of a square footage. I think that will be an interesting debate. If people 125 years ago had said, "My property tax will depend on how big a home I buy," I think we would have seen a lot smaller homes and a lot smaller lots bought. I think we will have an equal debate around that as the people who may have moved to north Ajax to buy a big home will suddenly find, "Whoops, I've been tricked into this." But you support a square footage.

**Mr Whitehead:** It's simple, it's identifiable, it's intelligible. I've argued elsewhere, and had economists poo-hoo the idea, that it's actually an incentive for smaller homes and so in some small way it's energy-efficient.

**Mr Phillips:** Sure. I think it's a public policy issue if you say, "We want intensification." That's one way tax policy drives public policy. I'm just saying that the rules are going to change in the middle of the game and it will provoke a—

**Mr Whitehead:** You'd probably want a phase-in, and I think the commission talks about that to some degree, that you can't just change it or else you suddenly hand out a whole bunch of capital benefits to people who bought houses on this system and suddenly benefit, and other people get hurt. They may have bought the day before under a certain tax system and suddenly it changes on them. You'd have to phase it in, I think.

**Mr Phillips:** As to the annual tune-up for vehicle licences, again, my old cynical nature tells me I think



we're heading to two- and three-year licence plates, so you may have to do it every two to three years.

Just in terms of debt-deficits—you haven't really touched on it here—we see two things. One is, many economists give us the kind of “the sky is falling” scenario, that we're virtually bankrupt. Then we see, as I said to a presenter earlier this week, the province floats its issue and it's gobbled up around the world in record time and people seem to love it. So the financial community gives us one piece of advice here and then when they're actually laying their money down seem to act in a different way. Just how concerned should we be about the deficit-debt situation?

**Mr Whitehead:** I'd put it this way. You're never bankrupt until people stop lending you money. When people come and say, “Well, there's no problem here, because the province floated some debt the other day and it was gobbled up and the market seemed to like the stuff,” I say that's fine and that's great, and I'm glad they did, but your problem is the day when they don't like the stuff, and then you really hit a wall. How concerned should you be? Usually the phrase is put, how high a deficit would be acceptable to the markets? At what point are they going to get panicked?

My sense there is that the market has been pretty understanding so far, because most other governments right around the world have been facing much the same sort of problem in terms of the size of their deficits. But as we come out of the recession and we come out of it in a worldwide way, I think you're going to see more improvement elsewhere in the world than I would suspect you're going to see in Ontario.

I've run some numbers that I don't think are complete, but my own sense is that given the sort of economic growth the ministry has projected, given the sort of expenditure pressures the province has, it's really hard to get the deficit to close very quickly when you get out beyond a couple of years.

Some numbers I've seen keep the deficit—all figures added in, taking out some of the off-budget items and putting them back in again—stay in the \$8-billion range right through the next four or five years. I don't think the markets will tolerate that sort of thing. What they want to see is a dedicated plan to get the deficit down. If they don't see any resolve to getting that deficit down, then they will start asking more in interest rates for the selling of your bonds. They won't stop buying the stuff, but they'll keep wanting a higher and higher premium until they see some resolve that the deficit situation's going to get under control.

**Mr Carr:** I agree very much with the payroll tax killing jobs. We've heard that in many instances, even with the workers' compensation assessment and so on, so I'm glad you stressed that point. I hope we can get through to the government on that as well.

One of the other points that I thought was very good is that most economists who come in are saying we need more and more savings, because if we discourage savings, we're going to discourage job creation. I don't think the government understands that portion of it. Even the OSSTF said: “Don't cut us. Tax the rich more.” The

problem, as you know, is that when you do that in this day and age, capital flowing the way it does, you don't even need to physically be there. You call your broker and your term deposit of \$100,000 can be moved to Switzerland tomorrow, or even to other provinces.

The government was elected on a platform of saying, “We can have all this spending, but we're going to tax somebody else, and it's going to be the rich.” The last budget of course had a massive surtax on the middle class. I always use a reference to the average Ford worker in Oakville. He's now hit with a surtax, and when he voted last time, he didn't think he was going to be the one who was rich. The reason is that the bulk of personal income tax comes from the middle class. If you increase it on the rich, there aren't as many there, but these people didn't get rich by being stupid: They just move it to other jurisdictions.

Is that a fairly good assessment of why the theory of “Let's tax the rich to get out of our problems” isn't working? Can you maybe expand on why? I shouldn't ask you this, but if that is the case and that's a platform, why wouldn't Bob Rae as a socialist have done that to get more revenue? Politically, it's not his constituency. You'd think he would have done that before the social contract and everything else. I think that's the reason, because there isn't enough revenue to get from the so-called rich, but maybe there's another reason. I don't know if you can comment on why Bob Rae didn't do it, but give us some idea of why the theory of taxing the rich just doesn't work any more.

**Mr Whitehead:** I don't know if this would fall under the category of leading the witness, but I've often commented that the big problem with the rich is that there are not enough of them and they move too quickly to be really taxed. This is the problem, that you really cannot tax them in any way that will not lead them to do the sort of things you're talking about, moving the money offshore or putting it in some other avenues to avoid that tax.

In particular, in the Fair Tax Commission's suggestions on the wealth tax, they have pointed out a couple of things. One is that there's a wealth tax in almost every other country in the world, so you could put a tax on that. There seems to be an operating assumption in the Fair Tax Commission that if we're lower on any tax than the rest of the world, we can catch up.

They also recognized that there was considerable mobility in that sort of capital. You could not just have it in, say, Ontario; you had to have it at the very least nationwide, or else you'd have money moving out of Toronto and moving into Winnipeg or Montreal or whatever just to avoid that inheritance tax.

The study the commission did indicated that at a 30% tax rate on any estate over \$1 million, it thought you would get about \$640 million a year. But if you take a look at the numbers, about \$460 million of that comes from estates worth more than \$5 million. I would argue that you must have a strange opinion of human behaviour to think that those people are going to sit still and be taxed like that.

On the other hand, you might say, “Okay, if it's done



on a national level, there's no problem here, because the key alternative is to go to the States and the States has a tax rate that's somewhat similar." The problem is that the States also has much lower income taxes in most cases.

You've got to look at a wealth tax not by itself but in conjunction with all the things that went right up to it. If you're going to tax income at 50% or 55% marginal rates, and tax any money that's spent after that at 15% when you add the GST and the PST together, and tax any income from your capital that's invested and then tax whatever's left over, I suggest you're creating a very powerful incentive for a lot of that very mobile money to move offshore.

**Mr Carr:** I agree 100%. I hope that gets through to the government. I won't be affected personally, not at my income, but the economic theories aren't there.

I will tell you this. I think the reason it did sell in the last election is that the public really believes there are a lot of people out there not paying their taxes, for whatever reason. I guess we all like to think we aren't rich. Even some of the people making \$90,000 or \$100,000 don't think they're rich. There is a real perception out there in the public that somebody else isn't paying their fair share. "It's only me and that's why I've got to do all these things with the underground economy," and so on. It will be interesting to see how that works out.

**The Chair:** I want to thank Mr Whitehead for making his presentation today on behalf of the Canadian Imperial Bank of Commerce.

This committee stands recessed.

*The committee recessed from 1150 to 1408.*

#### ASSOCIATION OF CANADIAN DISTILLERS

**The Chair:** The committee will come to order. Our first presentation this afternoon is by the Association of Canadian Distillers, and we have Mr Ronald Veilleux and Harold Ferguson before us. If you would identify yourselves for the purposes of the committee members who may not know you and for Hansard, I would appreciate that, and whenever you're ready you can proceed. I know you're ready because you've been waiting for a bit.

**Mr Ronald Veilleux:** I'm the president of the Association of Canadian Distillers, Ron Veilleux, and I have with me today Mr Harold Ferguson, who is the president and general manager of Canadian Mist in Collingwood, and also helping us with our presentation is Mr Sam Goodwin, near the projector.

Thank you for inviting us. I'm very pleased to be here to comment on the report of the Fair Tax Commission and to make recommendations regarding the 1994-95 budget. "Fairness" is an important word in the vocabulary of all Canadians and particularly of Ontarians. The Fair Tax Commission talks at great length about fairness but does little to address the inequitable treatment afforded to one important sector of the Ontario economy, the spirits industry.

The spirits industry has been on the receiving end of a lot of unfairness in the last decade. The reason this unfairness came about and continues unabated can be attributed to several factors, and I would like to name a few.

Governments, federal and provincial, saw the spirits industry as a necessary evil but nevertheless an evil, not to say the devil itself. As long as government could collect taxes from spirits and as long as the citizens did not abuse spirits too much, it was okay, it was acceptable. No one complained. Therefore, governments gradually over the years imposed unfair taxes, and the consumers continued to purchase. Today the result is that 83% of the price of spirits is tax, the highest-taxed commodity in this country and in this province. Some say this is equivalent to highway robbery.

The industry remained profitable during that period, and passively accepted, year after year, this unfairness. We never complained, even if we strongly believed that the treatment given was unfair. Today the situation has changed drastically. It has now become a sin to tax. Taxpayers are openly revolting and defying the system put in place by governments.

Taxpayers deeply believe it is fair to beat the system, a system they consider unfair. Taxpayers, who consume in moderation in 95% of cases in this province, are no longer willing to pay the exorbitant price imposed by the state on their favourite drink.

The spirits industry cannot take it any more and has become vocal because our livelihood is threatened. If the taxation unfairness continues over the years, our industry no doubt will die. Thousands of jobs will be lost in Ontario and billions of dollars in tax revenue will be forgone. Fairness does not exist in this province as far as our industry is concerned.

Looking at the second page of my presentation, you can see that fairness does not exist at both the federal and provincial levels. Fairness means that all beverage alcohol products must be treated equally, and certainly, looking at these charts, they are not treated equally.

Looking at the next page, pricing structure: Fairness means that all sectors of the beverage alcohol industry must operate under the same rules. If you look at that chart, our industry collects 17% of the consumer price. The beer industry and the wine industry collect 50%. This is unfair.

Looking at the decline of legal spirit sales in Ontario, one sees that unfairness leads to problems. This is the case of the spirits industry where unfairness has forced and continues to force the citizens of this province to opt out of the legal distribution channels and seek the more affordable illegal system. This has led to a large and growing illegal spirits market worth about \$800 million per year, according to the LCBO.

It can be seen that unfairness has led to a decline in legal sales, legal consumption, by about 46% over the last decade. It is estimated that the decline in legal consumption or the estimated decline in spirits consumption over the same period has been 20%. The gap between the legal sales and the estimated consumption is 26%. This 26% is the black market that we are facing today. This black market is growing.

Today, I seek fairness for our industry. Without it, this province will lose economic activity of \$800 million per year, 9,000 highly paid unionized jobs, \$311 million in



yearly exports. In addition to these numbers, the province will lose yearly \$663 million in LCBO revenue. This is net revenue from spirits for the LCBO. You add all of these numbers and you can deduce that this province, if nothing is done about this unfair tax, will lose about \$2 billion per year: very significant.

Looking at it another way, the province has lost about \$800 million yearly to smuggling for the last three years. If you project that for the next three years, you can add it up that we will lose in this province about \$4 billion over that period of time. Add to this the possibility that the industry will disappear because of the growth of the illegal market, the 9,000 jobs, the \$311 million, and growing, in exports and the \$663 million net revenue from spirits by the LCBO, and you have a tremendous impact on an industry which will disappear and on consumers who will continue to consume in moderation.

Fairness is the key word. For the distilled spirits industry it means survival. For many Ontarians, it means the ability to continue to work and to produce these spirits which 95% of the population of this province consume in moderation. For the government of Ontario it means collecting billions of dollars which otherwise will be lost to the underground economy.

My recommendation today is therefore a major reduction of taxes. If we go back to the pricing structure of distilled spirits, what I'm recommending is a major reduction of the markup line. As you can see on that line, today the LCBO on every 750 millilitre bottle takes a \$9 markup. This is a straight tax. We are suggesting that this should be lowered by \$4. By doing this, we believe, as I mentioned to this committee some weeks ago, we will bring back into the system the millions of illegal consumers and therefore the bottom line, hopefully, but I can't guarantee it, will be pretty well neutral. Thank you very much.

1420

**Mr Phillips:** This is an issue we're facing on the underground economy, that you also talked with us about, and it's similar on the tobacco side. Is there any other solution besides reducing taxes? Normally, one hates to give in to the smugglers by saying, "All right, you win, we'll deal with this by reducing price." Is there any other solution we could be looking at to deal with your concerns in the illicit alcohol area?

**Mr Veilleux:** Yes, Mr Phillips, there are other solutions, but I sincerely believe they will help but will be just patchwork. Additional policing no doubt will help, but I think what would help a great deal more is a very clear signal from the Minister of Health and the officials of the Department of Health and the officials of the LCBO clearly indicating to all those consumers who are consuming illegal products that they are playing a very dangerous game with their health.

I'm not suggesting here that all of these products are not fit for consumption. I'm only suggesting that several of these cases—there are millions of cases out there, two million in this province alone—do not meet Canadian standards and, as I've indicated to you before, a lot of these bottles have been tested and some pretty nasty, toxic materials have been found in these bottles. There-

fore, we could warn Ontarians that buying illegally they are not only doing a disservice to themselves but they're also doing a disservice to the province, because the billions of dollars that are being lost cannot be used for other programs that everyone so dearly deserves and wants.

**Mr Phillips:** Your industry has been one of the first and biggest exporters, I think. Of those 9,000 jobs in Ontario, what percentage do you think would be accounted for by your export business?

**Mr Harold Ferguson:** Canadian Mist exists in Collingwood to export, and perhaps I could address that matter. The industry exports more of its production than it sells domestically, so I'd say the majority of the jobs would be involved in the export business as well.

**Mr Phillips:** It's useful. The percentage of your costs associated with taxes versus your competitors, which are the others, wine and—would that be similar in other jurisdictions? I'm not sure of the historical reasons of how it got to be there; on the surface it looks strange, with beer being taxed at the rate of about 50% of manufacturer's costs and you're being taxed at the rate of probably about four times manufacturer's cost. Would the tax structure be similar in competing jurisdictions?

**Mr Veilleux:** It's very similar across Canada. The federal tax, obviously, is tendered across the board for all provinces, but the provincial taxes do vary significantly. Ontario and the main provinces in central Canada are pretty well equal, but as you go further west it seems that the provincial tax goes up slightly. In the Northwest Territories they are very heavily taxed. In the Maritimes, it's pretty well equivalent to the western provinces. So there are slight variations from province to province, but overall the prices between liquor boards across the land are pretty similar and the taxes are very similar.

**Mr Phillips:** Can you refresh our memory on your recommendation of the Ontario tax reduction you would be advocating and what that would do to increase legitimate sales? Is there any reasonable case that it's a sawoff?

**Mr Veilleux:** We are suggesting that we lower the taxes, as indicated, by \$4. That chart we last put on with the price structure demonstrates that the manufacturer's price is—you add the tax on it, then it's a tax on a tax on a tax, so it's a cascading effect of taxes.

If you lower the markup significantly, by \$4, then the bottom line becomes about \$12 to \$13 before federal GST and provincial RST. At that price level, \$12 to \$13, you are competing with the black market. This is the price you will pay on the street for an illegal bottle equivalent to what we're talking about here. Therefore, we believe the great majority of Ontarians, being law-abiding citizens, would prefer to consume legal material meeting Canadian standards and contributing to their social programs and being sure that they will not have negative effects from that consumption rather than purchasing in the black market.

How much, do we believe, of that activity will come back into the mainstream? It's very difficult to answer. It's an excellent question. My guess is that if we lower



by about \$4, at the minimum we would get back into the system about 25%. It could be 50%, but at 25% you would break even.

**Mr David Turnbull (York Mills):** What do you base it on when you're saying on the black market? Is there a danger that the black market would reduce its prices? What is the ability of the black market to reduce its prices in response to this?

**Mr Veilleux:** It's an excellent question. Again, it's part of the difficulty of putting a number on the amount of illegal sales coming back into the system. Obviously, if this province and other provinces—because there is an impact on other provinces also—decide tomorrow to lower their tax, the black market will respond. How much of a response can they make? They probably can lower their prices also by a few dollars, no doubt about that.

But if the government of the day decided to lower taxes and at the same time have a significant campaign to warn Ontarians about the negative effects of smuggling on their health and also on the economy of this province, I suggest that people would come back into the mainstream. The 25% guess I'm making is a guess, a calculated estimate.

**Mr Turnbull:** What is the approximate composition of the illegal liquor that is sold in Canada in terms of origin of manufacture? I know that with cigarettes a very large amount of the cigarettes are manufactured in Canada, exported to the US and then brought back in illegally. Give me a sense of how much is Canadian product which is brought back in and how much is conventional, say, US product bought in the normal way and then smuggled, and how much is really poor-quality liquor by some sort of fringe-type organization manufacturing it.

**Mr Veilleux:** Let me answer this question by saying that the cigarette market and the spirits market are very different. Canadians who smoke Canadian cigarettes like the taste, and therefore this is why you see this massive export to the US coming back into Canada.

When we talk about spirits, if I may use an example—let's say vodka—vodka is vodka is vodka. It doesn't matter where it's produced. It's very difficult to differentiate whether it comes from the US or Canada. Therefore Canadians are not looking for Canadian vodka or Canadian gin; they're looking for the best price. So it's not Canadian vodka going south coming back north that we're talking about. We're talking about material that has been produced much more cheaply in the United States, exported illegally in bulk into Canada and bottled locally and sold on the market. In some instances it is material with the same labels you will find in liquor stores. Very few of that. In 90% of cases, it is material labelled with labels that we've never seen before.

1430

On the other part of the question, how much of our material exported to the US comes back into Canada, the number we've been using based on some studies we have done through the recycling blue box program—because that's where all the bottles end up, and you'd be amazed what you find in these blue boxes—is less than 5%. Here

I'm not talking about Canadians going to the United States on holidays, on business, and bringing back into Canada one or two or three bottles. That's not what we're talking about when we're talking about this black market. We're talking about people who bring this material into this country in large quantities and do whatever they have to do with it to get it to the market and to find customers. That's what we're talking about.

That material is produced very cheaply, and generally it meets some standards, but in the process of distribution or bottling, of handling, people who are doing this bottling and handling are not concerned about your health or my health, and therefore this is where the material becomes suspicious.

**Mr Turnbull:** In terms of the product being distributed here, we know well with tobacco that's it's sold on native reserves and in corner stores illegally. Where is the principal distribution occurring of the illegal liquor?

**Mr Veilleux:** The principal distributions are very parallel to the tobacco distribution system. The police forces, at all levels I talk to, confirm to me that the tobacco distribution system is also being used to distribute our products.

**Mr Turnbull:** You mean corner stores and things like that?

**Mr Veilleux:** Not corner stores. People do distribution door to door with their station wagon or truck, and this is taking place in this province. People sell it after the shift has been completed in some plants where the old truck selling sandwiches and coffee distributes. Cabs distribute it.

I would like, to quote one MP from Ottawa whom I briefed last week. He told me he had received a phone call the day before from one of his constituents to the effect that the local distributor—everyone knows him—had just delivered across the street, and he said across the street is the church. I was very surprised at that and I asked the MP if I could quote him on that and he said yes. That's why I don't mind saying this publicly.

It's very pervasive. It's all over the place, to the point that one in four bottles sold in this country is sold illegally, and one in four in this province. This is growing because there's a strong revolt out there, and also because of the fact that Ontarians and Canadians possibly don't realize they are playing games with their health, and that's serious.

**Mr Turnbull:** Does the justice system have enough teeth to be able to deal with this at the moment? For example, if somebody's caught fishing illegally or hunting illegally, they can seize their vehicle. Is there any such parallel with people distributing alcohol?

**Mr Harold Ferguson:** Customs penalties have been increased dramatically, but again it's a matter of apprehending and of using the judicial system, and we all know how long that takes.

**Mrs Haslam:** To quote what you have just brought forward to us, you are asking for a major reduction in taxes. You're asking for \$4 to be taken off per bottle and saying that, bottom line, that would be revenue-neutral. Do you have a dollar figure in taxes the government



would lose should that come into effect?

**Mr Veilleux:** I have a figure. I'll base my response on the volume of legal sales done in Ontario on a yearly basis. In Ontario on a yearly basis, the LCBO sells about 4.7 million cases of spirits, so if you have 12 bottles per case times \$4, if my calculation is right, you would lose about \$240 million. But then you would gain the illegal material coming back in. This is where you—

**Mrs Haslam:** Yes, but you said it would be bottom-line-neutral. You said only 25% would come back into this system and we would be lucky to break even. The reason I'm concerned is that just recently we had the children's aid society come in. We all know it's a very tough time out there. Families are suffering. They are in a crisis situation where any further reductions to transfer payments put them in jeopardy, put children in jeopardy.

For those who come in and say, "Please, we need more money; education needs more money; health care needs more money; social assistance and the children's aid society need more money," we need to know where to cut in other areas so that I can write to the Treasurer and say: "I want more money to the children aid's society. I want more money to health. I want more money to education." We're asking where we would cut, because you've now come in and said, "We want you to cut taxes."

I have a concern here because we are getting people coming in and saying, "We want you to reduce taxes," and on the other side we're getting people saying, "If you reduce those taxes, then you have to make cuts to us, which affect our children." I'm asking you what I asked the children's aid society: Where would you make the cuts to make up for your revenue-neutral or for other additional expenses we're going to have to come forward with?

**Mr Veilleux:** I'm not qualified to recommend where I would make the cut and I therefore would not make that recommendation, but what I want to underline here is that my proposal goes exactly in the same direction as your proposal of helping people who need it the most.

If nothing is done with this industry, as I have indicated, billions of dollars are going to disappear. People in Ontario will continue to consume in moderation in 95% of cases and the abusers will still be there, but the billions of dollars that you get every year from this activity will be gone to the underground economy. Therefore the needy will have less money if we don't take any action. That's the proposal I'm making to the government. I know it's a leap of faith but if nothing is done we'll lose it all, and that's the problem.

**Mrs Haslam:** It's more than a leap of faith. I'm going to be very blunt here. In this economic climate, a distillery's proposal suggesting the lowering of taxes and having less revenue coming into the government really puts the government in a very hard spot even if you said, "In three years you could make it back." In three years what if we don't have a children aid's society left in Ontario?

I have a problem with companies and people who come in and say, "We want you to lower taxes," when

we as MPPs have people come into our office in dire straits, in social assistance, in children's services, in education. As MPPs and on this committee, we are saying, do you have some suggestions to make? Where would you make the cuts if you sat in our chairs?

**Mr Veilleux:** I'm sorry I cannot answer that question, but what I can say again is the only way that this province will have the dollars necessary to cover, to continue and to grow the good programs existing in the province is by having a healthy private sector. The taxes have to come from somewhere. We contribute significantly to the tax base of this province. The 9,000 employees we have in this province contribute large sums and our industry contributes. Not only that: the province recoups yearly almost \$1 billion from this industry, and if this goes I fail to see how it would help the needy. It will not help; they'll have even less cash.

At the same time, I agree with you. It's very tough for any government, not only the government of the day but any government, to make a very decisive decision here. I don't deny that. It's tough, but what I'm fighting for is the 9,000 highly paid, unionized people out there who see what's occurring in the marketplace, who see their jobs disappear not because people in this province have stopped consuming all of a sudden; people still have one drink once in a while or once a day or once a month or none at all and that's perfectly acceptable. But these people who do not consume, and 95% of the time in moderation, are not purchasing it from the legal system. So everyone loses and the only winner in this equation is the underground economy, the smugglers. The needy are not winners, we are not winners, the government of the day is not a winner; it's a lose-lose-lose type of situation, and that's what I'm trying to put across.

1440

**Mrs Haslam:** I understand. I'm just concerned that the lose-lose-lose is going to be the children, that's all.

**Mr Harold Ferguson:** May I make a comment? As a businessman who is responsible for 50 employees, I'm concerned about unemployment as well, and I think we all are; there's nobody in the province who isn't. But when you reflect on the reality of what we're dealing with, when you lose a job, you're creating more people who are going to have to fall into the safety net, and thankfully in the province, and most of the provinces in the country, we do have these safety nets.

But when we look at losing the job, we're not only looking at losing the job but we're also looking at losing revenue streams, and this is something you, in your roles, can realize more than the business people can realize, all the revenue streams that come off a lost job. Many of them today are payroll-driven; your employer health care tax is a perfect example. Unemployment insurance: Employers pay a premium of 1.4% of what the employee contributes. I mean, you go down the list. That revenue is also at risk. This isn't the revenue Mr Veilleux is talking about; this is other revenue, that's payroll-generated revenue lost from lost jobs.

We saw in the papers earlier in the week where the federal government of Canada is putting in place \$2.1 billion to create 10,000 jobs for this infrastructure



initiative. That represents a capital investment—as a businessman, this is how I look at it—of \$210,000 a job. That's a lot of money. When you put a company like the company I represent or other distillers represent or other manufacturers represent—I'll share with you our numbers. We're talking about a \$20-million investment for 50 employees. That's \$400,000 of capital per job, and as a business person, I'm saying to myself, "How can we create jobs with that kind of capital input?"

So we have to ensure that we don't put these jobs at risk. That's another spin on what you're saying, and I think we all appreciate the dilemma that we all find ourselves in. It's not "we and you," it's "us," I think; the whole thing.

**The Chair:** I thank the Association of Canadian Distillers for making this presentation.

#### ONTARIO PUBLIC SCHOOL BOARDS' ASSOCIATION

**Mr Al Jones:** I'm Al Jones and I'm the treasurer of the Ontario Public School Boards' Association. I'm a trustee with the Nipigon and Red Rock Board of Education in northern Ontario. My presentation will be assisted by Donna Cansfield, our first vice-president of the association and a trustee with the Etobicoke Board of Education, and Fiona Nelson, a member of the OPSBA board of directors, a former commissioner on the fair tax group, and a trustee with the Toronto board.

I have a few staff members in case you have questions that I or Donna or Fiona can't answer: Mike Benson, the executive director of OPSBA; Ron Sudds, a superintendent of business with the Northumberland and Clarington Board of Education; Bev Allen, the director of legislation and finance of our association; and Cynthia Andrew, the policy assistant.

I begin by saying we are pleased to appear before the standing committee on finance and economic affairs for the provincial government's pre-budget consultation.

Our association represents over 90 public school boards serving over 1.5 million students in the province of Ontario. OPSBA's mission is to promote and enhance public education by developing effective partnerships with other groups interested in public education and by providing a strong and effective voice speaking on behalf of the public school in Ontario.

You have a blue document in front of you. We will make comments and different points from that document as the presentation goes on.

Education is an essential service necessary to the future social and economic wellbeing of our citizens. A quality, publicly funded education system contributes to a well-trained labour force and our competitiveness in the emerging post-industrial economy.

The economy and employment are key public concerns. Most recognize that our universally accessible education system is fundamental to our economic health. Our youth must be prepared for participation in the workforce, a much different workforce than in the past.

In 1992, 41% of the labour force had completed post-secondary education, a diploma or a university degree. An additional 33% had graduated from high school. The Statistics Canada study reinforces the conclusions of

many that education, not experience, increasingly determines one's ability to compete in today's labour market.

We believe that the first level of economic restructuring is an investment in the current and future workforce. Our education system must have adequate provincial support to do its job.

It is obvious that we must not just maintain the current quality of the education system but improve it. As our ability to compete and maintain the quality of life in Ontario depends on a well-educated labour force, our schools must be adequately resourced. This year, we recommend the same provincial school board strategy as the most effective way to manage the restructuring of the education system.

Although the provincial government and the Ministry of Education and Training have not accepted our offer for a working partnership to find solutions, we will continue to promote adequate provincial support for our public education system and the restructuring of how we deliver education in our communities for the purpose of becoming more accountable, more responsive to students' needs and more cost-effective.

**Ms Donna Cansfield:** In 1992, school boards received a 2% increase in transfer payments. However, by the spring of 1993, grants to education had been reduced by 10%. This midyear reduction in provincial support has been difficult to manage and many school boards may possibly end their 1993 fiscal year with a deficit as a direct result of mid-year funding policy changes, changes in the province-to-school-board cash flow and reduced funding of the transition assistance fund and the restructuring fund. For public boards of education, this deficit must be accommodated in their 1994 budget processes, as public boards cannot legally deficit-finance.

Although public school boards have attempted to cushion the impact of the general legislative grant underfunding, the property tax has had to absorb the impact. Unlike municipalities, that can opt not to pave a road, school boards cannot close schools. They cannot refuse to educate children. Education is an essential service which must continue regardless of provincial expenditure controls.

If you note table 1 on page 3, indicated from a survey of OPSBA's 67 public school boards, you'll see that the average property tax in dollars has risen. The cost of education delivery in 1992 and 1993 increased, and pressures on the education system have increased costs by approximately 5.8%, well above the inflation level.

I'd like to give you a few of those kinds of examples, some of which are not directly student-related. I would cite for you employment equity, health tax for employees, GST. We now have retail sales tax on our insurance. Workers' compensation rates have risen. Utilities rose 14% last year for hydro and 14% this year for gas. And of course UIC and CPP have also risen. Add that to the other flip of the coin, to the issues around the demanded mandated programs of The Common Curriculum, de-streaming, English-as-a-second-language requirements, heritage language, mandatory junior kindergarten, and of course an issue that is going to create difficulties for all of us: inclusion or special education.



Many boards of education have realized cost savings by innovation and cooperation in many ways. Downsizing of school board administration and restructuring has been the key mechanism in managing provincial expenditure cuts for a public service that is actually in a growth program, but if there are further reductions in operating support to education, the impact at this point will be on the education program and the student.

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I would like to emphasize that it's rarely that I hear people speak about the children or the students when they talk about budget, yet if education is the cornerstone of our system and the key to economic recovery, I don't know how you can speak without speaking of the student, be that a student of 5 or a student of 35.

Both the provincial government and the school boards have stated that they are committed to the principle of student equity, the right of every student to equal educational opportunity. Grant reductions beyond the 1993 level of support will further erode student equity and school board equity. Due to the inadequacies of our current funding formula, resource-poor areas in particular and boards with declining enrolment would be penalized the most.

Our recommendation is that the province ensure adequate operating support to education in the upcoming fiscal year.

The report *Canadian School House in the Red: The First National Study of School Facilities*, prepared by the Ontario Association of School Business Officials, states that the greatest capital issue facing school boards is: "building deterioration (35%) and deferred maintenance (26%). Another 15% find that the greatest problem is indoor air quality, which is typically allied with building deterioration and maintenance problems."

The deferred maintenance pricetag in Ontario has reached \$396 million.

The Ontario Public School Boards' Association recommends that the 1994-95 provincial budget include school capital funding for building renovation and energy conservation to augment the existing capital grant plan and the school allocation under the federal-provincial job creation infrastructure program.

In 1992 and in 1993, we appeared before this committee and noted inefficiencies caused by the overregulated school capital grant program. Excessive reporting, duplication in administration between school boards and the province and inappropriate time frames for the various stages of projects all add to the cost of construction.

Therefore, the Ontario Public School Boards' Association recommends that the school capital grant program be reformed this year as the first stage of education finance reform, based on these principles: streamlined administration and cost-effectiveness; a clear and acceptable provincial process of allocating funding to school boards; school board decision-making for school projects based on five- and 10-year board capital planning; and local flexibility and innovation for financing schools at the local level.

**Ms Fiona Nelson:** Having spent three years immersed in Ontario's tax system, I am very happy to unload some of it. The thing we discovered on the Fair Tax Commission—we discovered several things—was, one, that people have no understanding of what level of government levies taxes and who is responsible for them. Secondly, the tax most people are most aware of all over the province, in all the hearings we had, is the property tax, and there is a perceived unfairness to the way education is funded.

Education, as I'm sure you know, is everybody's hope for the future, for society and for the economy. So of course, as soon as we go into a depression or difficult times, education is the goat. This is understandable but it does make conversation rather difficult.

At the commission we spent a lot of time trying to define what fairness was, and it's very clear that one of the prime requisites of tax fairness is that the tax be understood. Of course, when it comes to the funding of education, it is an absolutely marvellous maze through which people have to go. Property tax pays for a fair amount of education, but the grant plan of the province is absolutely impenetrable to everyone except about two people deep in the insides of the Ministry of Education and has been so for 20-odd years. This makes it very difficult for people to understand just what the situation is.

OPSBA has spent a lot of time at various meetings discussing the tax system, fair taxes and that sort of thing, and it has agreed with two directions of the Fair Tax Commission; one, that we need a new, fair and consistent system of assessment. The assessment system, as I'm sure all of you know, is an absolute mare's nest. It is very well supported within the ministry of revenue and has been for 20-odd years. It does provide full-time employment for 1,300 assessors. That does not make the system either fair or easy to understand, and it's become very clear to us in the discussions at OPSBA, as well as in the hearings of the commission, that the assessment system is totally broken and must be fixed before you can have any kind of tax fairness around the funding of education.

The commission suggested a new assessment system called "unit value," which anyone who can master a tape measure or a yardstick could understand. It would need to be done only once in the life of the property and would not be necessary to appeal, because as long as the dimensions of the building and the property remained constant, the assessment base would be the same. There would be an immense saving in reassessments, in assessment appeals and in everyone's understanding of the system. People are willing to pay taxes that even seem regressive if they understand it. When they don't understand it, that's where you get into deep problems.

The same is true of the grant system. The grant system is based on assessment growth. It has no relationship whatsoever to the needs of children. It is very clear that if the education grant system of the Ministry of Education were changed to one that used criteria of pupil need—and they are very simple criteria that can be obtained from the federal census, from Statistics Canada, things such as



the literacy and education level of the family, especially the mother, and the economic status of the family—they are much better predictors of the needs of children in education than the assessment growth of the particular municipality. It's very clear that if there were deep reforms in the assessment system and the grant system right away, the whole financing of education, even if it stayed on the same basis, would be understandable and therefore perceived as fairer.

But it's also clear to OPSBA that we need to get back to what was originally, many years ago, in fact several decades ago, called the Edmonton commitment, which is the provincial government picking up 60% overall of the funding of education and 40% remaining at the local level. It's also been very clear in the last 20 years that with the support of education to the local level having gone down and the number of mandated programs having gone up, property taxes had to rise to meet that difference since school boards are not allowed to run a deficit, as Donna Cansfield said.

OPSBA cannot support some of the recommendations of the Fair Tax Commission in this area, for example, the shift of \$3.5 billion from the residential property tax to the income tax. There are several reasons for that. We are in the middle of a depression. Whereas income tax used to be the major source of revenue for this province, it's now sunk below property tax. That's easy to understand. Property tax can't be avoided. It has a wonderful simplicity to its collection. If you move the support of education to income tax, you have a quite significant collection problem in difficult economic times and the whole thing is not made more understandable to people, so we have real concerns about that.

OPSBA is very much opposed to the idea of the province taking over the commercial and industrial tax base. That will not mean any reduction in property taxes to that level, but it will remove from the purview of the school boards the only dedicated tax that exists in the system. In other words, 100% of the dollars that are raised for education on the property tax go to education. There is no guarantee that money coming from the local base and going into the provincial revenues will be dedicated 100% to education. That is a matter of deep concern to us. There are real problems with dedicated taxes, but in the case of the education property tax base, it does mean that you elect a group of people to raise that tax and spend it and they are totally accountable for that money. That does have some value in people's eyes.

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The third recommendation of the Fair Tax Commission that OPSBA is opposed to is the expenditure controls for school boards, which are remarkably stringent and would virtually remove from school boards any real autonomy or ability to respond to local needs in any kind of timely way. It does seem to us to be an important thing to keep in mind that local government is the level of government people tend to turn to first. It is the one, even if it is not funding the programs, that tends to administer them or be visible to local people, and to take away their taxing authority in the area of education, or to restrict it so severely, does seem to be a serious problem. We think,

for example, that those particular recommendations, which are 75, 122, 123, 76 and 77, need significant rethinking.

We also think that the OPSBA model for a new education finance system should include: 60% funding from the province—from provincial revenues, not from expropriated local revenues; clearly defined objectives for the education system; and clearly defined roles for the province and for the local school boards. It has been suggested in discussions that what we actually need, because it doesn't exist, is a constitution between the province and the municipalities.

In the federal-provincial Constitution, the powers are very clearly laid out. No such constitution or quasi-constitution exists between the province and the municipalities. A great many of the concerns that we have would be solved if those powers were more clearly laid out.

As I said, we need a new education grant based on the accurate costing of education and an accurate and stable level of provincial support; a new distribution formula based on equity and tailored to the school board demographics and the needs of children; a province-wide consistent assessment system for tax fairness and for an accurate equalization mechanism; an improved property tax credit system to address potential property tax base regressivity.

One of the things that came up in the fairness discussions at the Fair Tax Commission is that people tend to evaluate a tax in isolation. It is much more appropriate to evaluate tax fairness on the basis of the tax mixture, because what might be regressive to one family in one tax can be made up in the kinds of progressivity that exist in other taxes. Tax mix is a very important thing for people to think about when they're thinking about fairness of taxes.

If the provincial government were willing to work in partnership to achieve the above, we feel we would have an equitable finance model with less reliance on property tax dollars, we would achieve the stated goals of the commission around fairness, and it would be more progressive. It would also be very much more possible for the average citizen to penetrate.

Communities seem to be looking for ways to become directly involved in determining the best education for their own community. The province can clearly set standards, which communities can develop processes to meet—that would not be the same from one community to the other but would meet the goals. It would seem that in that way you would beat the problem of some of the overlapping jurisdictions, some of the duplication, and you would also be able to put local resources to better use. It would seem to us that this is really a more valuable way to go.

Centralizing education finance and decision-making at the provincial level very significantly removes citizen access to local government institutions and decision-making. There doesn't seem to be any way that people think that's an improvement; it is a control measure. What is required here is a much greater element of trust in other politicians and in local communities to make



decisions and develop processes of accountability. It would seem to me that the key question of what would make a better education system needs to be dealt with. We are holding a great deal of hope in the learning commission assisting in that process.

Finally, I would like to make the recommendation of OPSBA that prior to implementation of any of the recommendations of the commission regarding local finance reform there be a provincial-local impact analysis committee comprised of representatives from municipalities, school boards and key provincial ministries. I think this is a long overdue conversation and would go a long way towards figuring out which of the recommendations would suit the provincial-local mix.

We're concluding our presentation with a long list of questions. It seems to me that both municipal finance and school board finance would be fundamentally affected by the Fair Tax Commission's directions. Will these finance reforms provide municipalities and school boards with adequate resources? It would seem that our recommendation for a provincial-local impact analysis would help with that.

There are several things in our list of questions that may hit your eye as being useful, and I'd like to depend on you to ask those questions. But we are all aware of the fact that people don't want to pay more taxes. They don't mind paying taxes, clearly, when they see the taxes being properly applied. It seems to us that a cooperative venture between the provincial and local government authorities to develop a new taxation system for supporting local government would help to develop the sense of trust and awareness in most citizens that this is the right way to go and that they can understand the system that is developed for them.

I'm going to stop there. I think questions are going to be useful to us as well as you.

**Mr Turnbull:** I'm going to address Fiona because she was on the Fair Tax Commission. Frankly, I need two hours to ask you questions, but in a nutshell, do you believe that the present assessment system and the regime under the ministry of revenue is a sort of self-perpetuating, self-serving thing that needs to be changed?

**Ms Nelson:** I certainly think it's a system that is broken beyond fixing. I think the proposal of a new assessment system based on unit value is one that would work and that people would understand.

**Mr Turnbull:** Would you apply unit value to commercial properties?

**Ms Nelson:** The commission, in dealing with that, felt that rental value probably was a more appropriate and stable way of doing it and in fact is close to the way commercial real estate people do their assessments now, and have done since 1905.

**Mr Turnbull:** If we were to go to rental values today, and let's just say the province were to go with province-wide pooling of commercial assessment, a lot of the municipalities and school boards outside of the greater Metro area that might be eyeing Metro with a great deal of desire at this moment, with all due respect to you, might be terribly surprised, because in many of the

buildings today with maybe a 20% or 25% vacancy rate the actual occupied space may be only getting one tenth of the rent it was getting four years ago. That would imply an assessment value of one tenth of what it was at that time. If we went to unit assessment, if you're going with rental value for those buildings, you'd have to update that from time to time.

**Ms Nelson:** The rental value would be based on the potential revenue as well as the existing revenue, surely. This was the thing that obviously the business occupancy tax attempted to moderate and mediate to some extent. Clearly there has to be some more sensitive system. The business occupancy tax turned out to be a pretty blunt instrument and then, when the place wasn't occupied, was an enormous drain on potential revenues because it couldn't be collected. There clearly has to be some work done on the way in which the assessment of commercial and industrial properties is figured out, and it varies very much across the province.

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**Mrs Haslam:** You said that taxpayers like to see their taxes properly applied. Do you think that today the taxpayers feel they are getting value for their money in the education system?

**Ms Nelson:** When I started I said that education is the hope people have for the future and for the economy, and so it's always the goat when things are not going well, which is a very oversimplified view people have. There are very varying views on that, depending on where your child is in the school system or whether you have one in the school system. There are remarkably strong endorsements from some people of the school system and remarkably strong condemnations from others. I don't know what the answer to your question is overall.

**Mrs Haslam:** Under your third summary of recommendations, you recommended that the school capital grant program be reformed this year "as the first stage of education finance reform, based on these principles." I didn't see shared facilities in there. The reason I'm interested is that in Perth the two school boards have a wonderfully flexible, local, innovative financial arrangement. I was wondering if you thought that would be something worthwhile mentioning in this reform as part of the solution.

**Ms Cansfield:** It's always been the position of the school board association for that flexibility at the local level. It's one of the things we're asking for, that school boards can look at issues of amalgamation not only of actual facilities, but possibly infrastructure as well, where they determine under their needs. Definitely this is a direction we wholeheartedly support, but what we're suggesting is that it has to come from the community. You can't make change by memo. You have to have the community want this to be in, and that's why we're asking for that kind of flexibility.

**Mr Phillips:** I'm trying to focus a little bit on the upcoming budget and what we should be thinking about here. I gather from your recommendation that you're strongly of the opinion that this should be the year we begin to shift back to an increasing percentage of funding from the province and a decreasing percentage from the



property tax. How would that actually work? What specific kind of recommendation are you proposing to us?

**Ms Cansfield:** I think there are two. Maybe Mike will answer one part. I would like to re-emphasize that we've indicated that if there are further reductions—first of all, our primary focus is to maintain. We're very concerned about additional reductions, to begin with. Then we want an opportunity to have flexibility so that school boards can put in programs that meet their community needs as opposed to a top-down mandate, where they don't need them but have to pay for them and they have to raise the taxes themselves to do it because there are no dollars forthcoming from the province. That's critical at the beginning. Then we look to the restructuring initiatives. I'll let Michael answer that.

**Mr Phillips:** I'm trying to get an idea of it specifically when you say "adequate operating support."

**Mr Mike Benson:** It's important to realize initially that much of the increased pressure on property tax for education is actually due to mandates that are not at the school board level, but when there aren't concomitant transfer payments going on with them the effect is felt at the local level. That's happened over a number of years and the result has been that there's a shift to property tax rather than grants in funding of education. We think that needs to be reversed. If your question is, what's the source of revenues that can allow us provincially to increase the provincial share, it's our view—

**Mr Phillips:** My question is, what is an adequate level of grant support to accomplish what you—I'm not saying we would recommend it, but just what are you suggesting?

**Mr Benson:** We think approaching the 60% level would allow adequate equalization so that you can get some balance, so that the have-not boards can deliver an appropriate program. Attempting to achieve that will require some reallocation of expenditures that are made at the provincial level. How does education stack up with other provincially funded programs? To the extent that there is less pressure subsequently on the property tax, perhaps the property tax or that local revenue can fund other things that are presently provincially funded, for example.

**The Chair:** I thank the Ontario Public School Boards' Association for its presentation.

#### ONTARIO CONFEDERATION OF UNIVERSITY FACULTY ASSOCIATIONS

**Dr Saul Ross:** Marion Perrin is the executive director of OCUFA, Rob Centa is the community and government relations officer at OCUFA, and I'm Dr Saul Ross, the president of OCUFA.

OCUFA, the organization representing 12,000 academic staff in Ontario's universities, is pleased to appear before you again as you prepare your advice to the Legislature on the funding of universities in Ontario. We come before you today with mixed feelings.

This committee has in the past been supportive of universities and their funding. Shortly after last year's hearings, however, universities were dealt two serious financial blows: first by the expenditure control plan and

then by the social contract. Both were done in the name of cutting government costs in order to reduce the deficit. Both failed to take into account the importance of public sector spending. Both failed to take into account the role of universities in generating economic benefits. Both failed to take into account the role of universities in contributing to the economic recovery needed to turn around the current dismal economic picture.

The Treasurer appeared before you last week to bring yet another round of bad news about a shortfall in revenues. It was curious to see reports of his pessimistic outlook in leading Toronto newspapers juxtaposed with optimistic articles about how the economy is turning around. It is regrettable that neither he nor his government have yet understood that slashing public sector spending is counterproductive to the very goal he wishes to bring about: an increase in government revenues.

In previous presentations to this committee, OCUFA has told how underfunding has damaged quality, access and equity at Ontario universities. Today, we have but three points to make.

First, we address the extensive economic benefits that are generated by universities. Second, we argue that post-secondary education must be publicly accountable and must therefore remain publicly funded. Third, as you requested, we comment briefly on the recently released report of the Fair Tax Commission, which we regret had so little to say about the universities of Ontario.

Post-secondary education generates extensive public economic benefits. It does so in several ways. Universities are major contributors to the local and regional economies of which they are a part. Members of the university community at the University of Lethbridge were given bright neon stickers to affix to their cheques and credit card slips indicating that the expenditure had been made by university members.

This was designed to demonstrate the university's importance in the economy of Lethbridge, Alberta. It provided an immediate and rather startling reminder to local merchants and governments of just one kind of economic contribution made by the university to their community. Committee members, especially those representing ridings in which universities are located, may wish to close their eyes and think about all those neon stickers and the consequences for their own communities if they were to disappear.

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There have been numerous studies that have documented such contributions by universities to their local and regional economies. I refer you to the brief itself for some of the examples from around the world where the same results are shown. Closer to home, the Alliance of Ontario Universities showed in a 1991 study that "Each year, universities pump \$6.2 billion into the economy and more than 138,000 jobs are associated with university operations."

Universities contribute to the economy in two unique ways. First, they produce an educated citizenry that contributes to the economy as well as the polity and society of which they are a part. Second, they generate



new knowledge that becomes both a social and economic asset to the nation and the world.

We do not need to belabour the point with this committee that the recession, together with the free trade agreement, has cost this province hundreds of thousands of jobs. A study by the Bank of Nova Scotia quoted in a recent Toronto Star editorial states, "While 640,000 jobs performed by Canadians with high school education or less have been lost since 1990, 450,000 jobs for Canadians with more than a high school education were gained." This is a testimony to the economic utility of post-secondary education. The editorial goes on to say, "Advanced skills are a worker's best protection as technology and global competition purge low-skill jobs in Canada."

For similar observations from others, I refer you to our brief.

The Organization for Economic Cooperation and Development data for 1991 show what they have shown consistently in the past, that increasingly higher levels of education are directly related to decreasing rates of unemployment. In Canada, the unemployment rates for those with no high school diploma are 14.1%; with a high school diploma 9.5%; with the equivalent of a college diploma 7.8%; and with a university degree, 5.1%.

Much has been said and written about the information superhighway. Just yesterday, in a news release entitled "The Information Highway is a Fundamental Vision for Ontario," Premier Bob Rae wrote:

"This government recognizes information infrastructure as the wave of the future, and this province has already accepted this vision as critical to Ontario's success. As a cornerstone of our provincial economy, this information highway will play a critical role to establish Ontario's competitive position in the global marketplace. Our future success will depend on this industry's knowledge and information."

It is important to realize that the driver's licence necessary to drive on the information superhighway is graduated indeed. It is advanced education. It is a degree of one sort or another. Those without higher education are going to be left behind by the information society.

It is universities that educate those who will be able to utilize such technology to contribute to economic development and advancement and to further human knowledge. It is universities that produce the knowledge that creates information superhighways and will produce the knowledge to create even more complex, as yet unimagined, highways and skyways that will take us to places we cannot even conceive of as yet.

This is a third way in which universities contribute to the economy, by generating new knowledge that becomes both a social and economic asset to Ontario and Canada. Both basic and applied research are vital to the mission of universities and vital to the scholarly endeavours of university academic staff and students. The interplay between research and teaching informs, assists and energizes both.

In an article in the Toronto Star entitled "Spending on Research is Money Well Spent," Howard Dickson points

out that when we do invest in research we produce world-class results, as can be seen by the investment in life sciences that has "become the best in the world over every discipline and all countries...Michael Smith's Nobel prize for chemistry is another tribute to Canadian excellence in basic research."

Recognizing the economic contribution of the university and those it educates is vital to competing in the new global economy. David Crane, the Star's economics editor, in a column entitled "Can Canada Survive New Global Economy?" says:

"Productivity and growth increasingly depend on investment in ideas, knowledge and innovation as well as the institutions that support such activities. This means that future prosperity...depends on past and continuing efforts in research and development, education and product differentiation."

To participate fully in the global economy, Canada and Ontario need universities that are, at a minimum, adequately funded. We also need universities that are publicly funded and accountable institutions. They must be accountable to the government that funds them and to the communities they serve. Such accountability is jeopardized by privatization. The neo-conservative agenda followed by the previous federal government that has so decimated many of our Canadian public institutions is also threatening Ontario universities. Privatization in a variety of forms is threatening to jeopardize the contribution that can be made by Ontario universities, as well as their accountability.

Approximately three quarters of the operating funds of Ontario universities come from Ontario government grants. In his December 20, 1993, response to the final report of the Task Force on University Accountability, the Minister of Education and Training agreed "that the Provincial Auditor should have authority to conduct audits of all funds provided by the government of Ontario for operating purposes." What is not stated here but is implicit is that the Provincial Auditor does not have the authority to audit any other funds that come into the university, either in the operating fund or into other expendable and restricted funds, including tuition fees.

A little more than two years ago, your colleagues on the public accounts committee were incensed that the administration of the University of Toronto took this position. In response, they precipitated the appointment of the Task Force on University Accountability, with a mandate to look into the matter. Two years later, university administrations are still not being asked to account for the remainder of the operating or other funds that come in to the institutions, which are in fact public institutions. On October 6, 1993, OCUFA wrote to the minister in response to the task force's final report stating our position that: "The Provincial Auditor should be able to audit all revenue, including that from fees and other private funds. To be fully accountable is to be accountable in full."

University presidents, through the Council of Ontario Universities, have been arguing for a massive increase in tuition fees. OCUFA opposes tuition fee increases because we are concerned that user fees damage access



and equity in the universities of Ontario. We oppose them because the money generated by tuition fees is from private sources and is money for which university administrators are not accountable. This contributes further to the privatization of the university.

As we pointed out in our October 6, 1993, letter to the minister:

"Non-accountability for tuition fee revenue and other private funds increases the incentive to administrators to favour private over public funds. Limiting the scope of the Provincial Auditor's inquiry does a disservice to the maintenance of strong publicly funded institutions. The recent proposal by COU favouring a 50% increase in tuition fees and calling for a decrease in operating grants illustrates what can happen if the pendulum of accountability is allowed to swing only to the side of operating revenue from government of Ontario funds."

The minister does not appear to share our concerns in this regard. Perhaps this committee will.

OCUFA has further concerns about the privatization of universities, as well as other levels of the educational system. Cooperation between universities and individual, group and corporate members of the communities they serve is important. Universities should maintain productive and open ties with governments, labour, business and community groups.

Our concern is when these ties, or "partnerships" as they are frequently called, involve large donations, most commonly from the business community. There is always the danger that such donations are accompanied by explicit or implicit assumptions about reciprocity. To put it more colloquially, he who pays the piper calls the tune.

We look with some concern at recent events in the school system in Toronto, such as the exclusive arrangement between the Toronto Board of Education and the Pepsi-Cola company, or the planned linkage between an environmentally oriented Toronto secondary school and Dow Chemical and DuPont. There are similar linkages between universities and corporate giants. Our concern is that scholarship not be dictated by corporate or commercial interests.

**1530**

We do not share the free market vision of the future of the university as espoused by the Economist or the Globe and Mail. Corporations, especially large corporations, are great beneficiaries of the university system, and it would seem only right that they should contribute to the universities. This could be accomplished through a corporate education tax that could be used to help support universities. Such a tax was not, unfortunately, among the recommendations of the Fair Tax Commission. We are quite disappointed that the Fair Tax Commission had little, if anything, to say about post-secondary education.

We regret too that the commission worked for so many years, during which time so few conclusions were released to the public, and then chose to offer all of its results in a form that is difficult to digest. It is even more difficult since it has only been available for a very few weeks. We attempt, however, to extrapolate here from a few of the commission's points.

Arguments about the relative fairness of flat taxation add to what we consider to be a compelling case against income-contingent repayment plans. ICRP meets neither the test of horizontal equity nor vertical equity. Proponents of ICRP argue that it better captures the private benefits that accrue to graduates after completion of their studies. This, however, is far from the case. In fact, those who accrue the highest levels of private benefits will pay off their loans much more rapidly and incur far lower total costs, debt plus interest, over time. If anything, an ICRP regime would reinforce any movement away from progressive taxation and reinforce the trend towards flat taxes and user fees.

One aspect that disappoints us is the way the commission seems to view post-secondary education. Elementary and secondary education are viewed as universal rights and therefore are to be financed out of general operating revenues. Post-secondary education is lumped in with highways, golf courses and swimming pools. Given all that we know about the importance of post-secondary education to the current and future economy and society of Canada, it is imperative that we move towards a conceptualization of it as a universal right, with attendant funding.

The use of high school completion as an arbitrary cutoff point at which education ceases to be a universal right dates back to a time when the high school diploma was the standard for determining whether one would get a job. At that time, comparisons in earnings were made between those who were high school graduates and those who were high school dropouts. As has been shown here and elsewhere, this is no longer the case. A university degree has replaced the high school diploma as the standard. The universal right, then, should extend to include post-secondary education.

The commission makes a powerful case for shifting the cost of primary and secondary education from property taxes to income taxes. It cites, among other things, educational equity for the students involved. Educational equity does not stop after secondary school. Whether it be a change in the way that primary and secondary education is funded or any other initiatives that schools devise in order to achieve educational equity, none will accord equal opportunity to disadvantaged groups if the doors to post-secondary education are closed to them.

We close with another quotation from Premier Rae's press release: "Ontario fully endorses the vital importance of information infrastructure to our future competitiveness and social wellbeing. We are taking steps to assure our future in this area."

To the committee and to Premier Rae we say, ensure that these steps include recognition of the importance of universities to the present and future economy. Ensure the supply of strong, fully accountable, well-funded public institutions, and ensure that equity considerations inform all decisions affecting universities. We wish you well in making your recommendations.

**Mrs Haslam:** I'm going to be very brief; I know this will surprise everybody. We've had a presentation by the Council of Ontario Universities. I'm sure you know they are recommending that "increased funding from the



provincial government and a reform of Ontario's tuition fee policies, a higher level of financial support from the provincial government and a significant increase in tuition fees, coupled with an improved program of student assistance, will help to create a system of universities which are accessible to all qualified students," and so on and so forth.

I mention this because now we have your group coming in and saying you don't believe in the increase of tuition fees. I've had a discussion with one of your members about tuition fees. I've asked students in my own community about this. I said, "Given the option of an increase in tuition fees, or if we didn't raise tuition fees and because of financial constraints we couldn't offer more money to the post-secondary education system, would you accept less facilities or larger classes, or would you prefer to have your tuition fees raised?"

I must tell you that the students I talked to said, "I'd rather have the tuition fees raised, because it then gives us better facilities and better instructional opportunities." One of the students said, "When I pay to be in the university, I am more inclined to work harder at those studies, because I have put in more money towards the system."

Having said all that, I must tell you that as a base NDPer I am more interested in equal access to the education system and wouldn't like to see tuition raised, but I ask for your comments considering that this has come from the Council of Ontario Universities recommending this.

**Dr Ross:** You have, in effect, asked me a multiple-choice question.

**Mrs Haslam:** I have to get them all in because our time is limited.

**Dr Ross:** My answer is that with the exception of one option, all of them are unacceptable to us. From our perspective, the only option is increased government financial support. We reject the view that there isn't money available. There is always money available from a government. It always invests in that which it finds most important.

If we go the other route, there is adequate research to show that increases in tuition fees reduce applications. They turn students away. What is often not quoted in this is a very interesting study which shows that reductions in tuition fees increase the number of students coming. If equity and accessibility are meaningful goals that your government is committed to, there is only one answer to the questions you asked me.

**Mrs Haslam:** Does that increase in applications also translate into an increase in graduations?

**Dr Ross:** I haven't seen any research on that, but one would assume that with the normal population that applies and comes in, if you increase the numbers who come in, the same graduation rate will apply to them. That may be erroneous; it may require research, I don't know.

**Mrs Haslam:** You don't know if you have that information available?

**Dr Ross:** No, I don't think that's available. The other

thing I can tell you is that unless there is a horrendous increase in tuition fees, the amount of money that would be raised is a pittance and will not solve the serious problems we have at present in the universities.

**Mr Phillips:** You have your finger on a trend which I think is true in the universities, true in the hospital sector, true in a whole bunch of areas, and that is that governments, and this government's no exception, are looking to all sorts of new sources of revenue. You've put your finger on that, that one of your concerns is accountability for the spending of that source of revenue. What is the problem with accountability right now with the source of revenue? What is your concern? Is it that in your mind the people who administer those funds aren't necessarily allocating them properly?

**Dr Ross:** Our concern is that universities, as public institutions, should be fully accountable publicly. The universities, under the leadership of the University of Toronto, that balked at allowing the Provincial Auditor to examine all of the fees insisted that only the moneys transferred from the government to the university should be open to the Provincial Auditor.

In effect, what they are saying is: "We are not a fully public institution. We are partly public, partly private." As tuition fees increase, then the private segment becomes greater than the public segment and the answer then becomes, "Sure, you can come in and audit the transfer fees that come from government, but it's such a small sector of our operation, it's meaningless."

I have looked at the supposedly audited statements of universities, and if you attempt to match what the final statement is to what the budget is, it's impossible. There is no way that an average person, or even a more sophisticated individual, can determine how effectively, how efficiently or where the university has spent its money; in effect, no accountability and a move towards privatization within a public institution, which we find unacceptable.

1540

**Ms Marion Perrin:** I'd like to add to the president's remarks. This is a very important time historically in this province on this issue of tuition fees. Do we want public institutions or do we want private institutions post-secondarily? We want public institutions so that access is not to be any more difficult than it already is. This is an extremely important time in this province with respect to that particular issue: private versus public.

**Dr Ross:** If I could add one other point, as we stated in the brief, there was a time when a high school diploma was your passport to a reasonably good future. That time no longer exists. A university degree is your passport to a better future, not only as an individual but to making a better contribution economically and socially to the province. We are locked in a time warp that allows us to have an arbitrary cutoff point in high schools that says, "We put universities in a completely different category." To me it doesn't make sense.

**Mr Turnbull:** Focusing on this question of tuition fees, and of course an increase in tuition fees has been suggested for some years now by the university presidents, you're saying that you believe this is wrong



because in some way you believe there will be a reduction in the enrolment as you increase fees. How do you respond to the fact that yesterday we had the presidents of the universities making a presentation to this committee and they presented a diagram which indicated—I may not have the exact number of years—that the tuition fees are, in real terms, lower than they were 25 years ago.

**Dr Ross:** My reply to you is that they're still not nearly low enough, that if we are serious about having an educated population in this province, if we are serious about a commitment to public education, I don't see why we cut that notion off at the end of high school.

**Mr Turnbull:** Let me understand. You're saying they're not low enough. How low would they have to go, in your view?

**Dr Ross:** How low would they have to go? To the point where the only determining factor in admission to universities is a student's ability to enter, where the economic factor does not impede a student from acquiring an education that enables that student to develop fully and become a much greater contributor to our province.

**Mr Turnbull:** You have to understand that I'm from the opposition.

**Dr Ross:** Oh, I understand that.

**Mr Turnbull:** But I understand the government has a very serious problem today. They are spending 25% more than they're taking in. You suggested before as one of your solutions, and I paid close attention to what you were saying—correct me if I'm wrong, but I think the only solution you offered was a corporate education tax.

**Dr Ross:** That's one suggestion. The other suggestion is to find the resources where they are available. I must tell you that we attended a meeting this morning put on by the Ontario Coalition for Social Justice, marking the end of corporate tax year. Today, fortuitously, marks the end of corporate tax year. From this point on, corporations pay no tax. We also have documentation that shows billions of dollars in unpaid taxes by highly profitable corporations. It seems to me the problem is not one of trying to raise tuition fees. To me, very clearly, the problem is obtaining resources from where they are available abundantly so that we can educate all our children, youth and young people properly.

**The Chair:** Regretfully, our time has expired. I thank the Ontario Confederation of University Faculty Associations for making its presentation.

#### ONTARIO NURSES' ASSOCIATION

**Ms Ina Caissey:** I am Ina Caissey. With me is Lesley Bell, who is the chief executive officer, Noelle Andrews, director of government relations, and Seppo Nousiainen, who is one of our research officers.

As president of the Ontario Nurses' Association, I speak on behalf of over 50,000 unionized staff nurses working in the province's hospitals, nursing homes, homes for the aged, community health units, developmental centres and industry.

We welcome this opportunity to appear before the standing committee on finance and economic affairs to discuss our submission for the 1994 pre-budget consultations.

Our members urge the government to begin the process of rebuilding our ailing economy. It is our sincere hope that the 1994 budget will spearhead this process, and our comments are directed to that end.

Our union has had many serious concerns about the repercussions of unilateral cutbacks on health care spending and the profound and widespread effect they have had on nursing jobs. Prior to the social contract legislation, we had already seen the loss of over 2,500 of our members' jobs due to layoff. Since June 1993, the effective date of the social contract, a further 265 nursing jobs have been lost. If I can translate the dramatic reduction in our membership into the effect on the health care industry, it means very simply that there are many fewer nurses to provide the necessary levels of patient care. Therefore, the patient is at risk of insult.

The reduction in working nurses does not even begin to gauge the level of hardship experienced by our members due to the recession and recession-induced measures like the social contract, nor does it address the residual effect on the delivery of health care.

#### 1550

Many employers have been using attrition and early retirement to reduce staffing. These numbers do not show up as layoffs. Many of our part-timers listed on casual rosters are simply not being called in or are being called in less frequently. These too are not measured as layoffs.

One of the key ways in which the true nature of unemployment or underemployment has been hidden is through cutbacks in hours of work. Our full-timers are being transferred to part-time employment and the hours of work for part-timers are being reduced significantly. Already, more than half of our members are part-time. While many of these nurses worked the equivalent of full-time hours in the past years, these hours have more often than not been reduced by half. Indeed, some of our nurses may not work more than one shift per week.

Although we are opposed to the means by which reductions have been achieved, we believe the government has succeeded in significantly reining in public sector expenditures, in both the short and medium term. If the government's projections are right, the corner will have been turned in the current fiscal year.

Even if the government's figures prove to be slightly inaccurate, various expenditure restraint programs like the numerous initiatives to rationalize public services, combined with a growing economy, indicate there will be significantly less pressure on government finances over the next few years. This would happen in any cyclical recovery, but the difference this time is the built-in restraints that will continue to hold down expenditures for many years to come.

Some of these restraints, the social contract being one, are regrettable and unnecessary. Others, in our view, are more sensible; for instance, rationalization of government services for more cost-effective delivery.

While we feel these developments are generally to be lauded, they have not come without great human cost in terms of layoffs, wage restraint, cutbacks in work hours and increased workload for those who remain in govern-



ment service. Even worse, there is no sign that this is going to stop over the next few years unless a conscious decision is made now that enough damage has been done and that it is time to repair the damage.

To do that, the government must stop fixating on the deficit and a reduction in government spending, and make its priority rebuilding the tattered public sector and the economy as a whole. This means a recognition that the government must finally begin to manage the health care system instead of indiscriminately slashing away at any and all programs. It must set priorities, restrain growth in some areas, encourage growth in other areas and preserve the status quo in yet other areas.

As we indicated in our 1993 report *Rethinking Health Care*, which looks at the state of health care in Ontario, we firmly believe that the emphasis must be on reallocating resources, not on trying to persuade people, particularly the sick and vulnerable, that underfunding is the problem.

From our front-line perspective, we are convinced that only new ideas, new strategies and an entirely new understanding of the concept of health will guarantee us a sound, workable health care system.

Based on our experience and insights as front-line deliverers of health care, we made in our report the following 10 recommendations:

(1) Make better use of existing resources and institute better quality controls, so that only the most effective and least expensive treatments are used.

(2) Shift resources from institutions to community-based care.

(3) Insist that the federal government remain a major funder of Ontario's health care system and that the provincial government recognizes the impact of its programs and policies on the health of consumers.

(4) Develop resources for better self-care, educating the public for greater health awareness and a capacity for personal responsibility for health.

(5) Encourage a dialogue between providers and consumers on realistic limits to health care, while urging the government to promote and implement the goals defined by the Premier's Council on Health Strategy.

(6) Recognize that registered nurses have always perceived and dealt with people in the context of their lives, not just as patients, and are ideally suited for the generalist's role. Make better use of our skills and experience.

(7) Expand the role of RNs in medical practice, using them to educate and counsel consumers and help families make sound health-related decisions.

(8) Ensure the government supports community health centres and involves them in more community development and activism in a system that serves a complex, multicultural society.

(9) Embrace new and innovative ideas and diffuse them more broadly and rapidly throughout the health care system.

(10) Make hospitals more accountable by replacing their boards with a mix of representatives and providers

from the communities they serve.

Change is inevitable and needed urgently. We really have reached our limits and can no longer assume that money will answer all our health care problems. This gives us the opportunity to reshape the system, to make it more flexible, more humane and more effective.

The need for reform is evident in any examination of the role nurses are permitted to play in the health care system. Many services now being provided by doctors on a fee-for-service basis, well-baby checkups, Pap smears, routine physical exams and immunizations, could be more efficiently and cost-effectively provided by nurses.

As educators, nurses can promote the message of healthy lifestyle choices and prevention. We already know that when nurses' skills are fully acknowledged and used, costly hospitalization in many cases can be avoided.

Whatever the innovation, institutions can no longer afford to respond to today's problems based on yesterday's thinking, and before crucial decisions are made, especially those that may have unintended consequences for the most vulnerable members of our society, they should be made only after we all, health care providers and health care consumers, have had our say.

From our point of view we urgently recommend the following: First, put a hold on further cuts to the health institutional sector at least until more community services become available. Further cuts to acute care beds can no longer be sustained, particularly since there are no community alternatives. We should stop and assess how access to services and the quality of patient care have been affected by the massive reduction in institutional beds that has already taken place.

Our members tell us that the level of stress has steadily increased in hospitals as they try to do more with less. This cannot be good for patient care. The incidence of formal complaints about workload has been steadily rising under our professional responsibility complaint process, a mechanism in which staff nurses can raise their concerns about the level of patient care being provided. Just in the last five working days, we have learned of another six hospitals where the workload situation has become so bad that nurses are thinking of launching formal complaints.

Just to give you a couple of ideas of the concerns that we have about the quality of care from our professional responsibility complaint process, at a home in Windsor staffing was cut and it was creating problems with the residents. They were suffering more injuries and bed sores and it was becoming noisier. The director of nursing did not like the noise level, so she had some of the residents heavily sedated to the point that two patients ended up in emergency in respiratory arrest.

In another home, there is one health care aide to feed 30 people in a half-hour time period and she must use an elevator to get these residents to and from the dining room and then ensure that they eat.

At a hospital in North Bay, they have cut the staffing in the coronary care unit and now they are having unqualified RNs; that is, RNs without the additional expertise to give streptokinase. This is a drug you give to



people who have just had a heart attack and it is a medication with potentially lethal side-effects.

This is happening across the province. There are many more examples I could give you.

The way in which government presents the issues on health care to the public suggests there are no problems. For instance, the Ministry of Health recently released a report entitled *Managing Health Care Resources*. This report cites approvingly that "the number of hospital days per 1,000 [Ontario residents] has decreased by 25% and the average length of stay has declined by 17%" from 1987-88 to 1992-93. This report does not even hint at the negative consequences of such a massive reduction.

1600

This same report says there has been "a reduction of...5,000 acute hospital beds in Ontario over the same period" while "the number of persons treated grew by over 8% or about 1.2 million cases." Not a word is said about the possible negative effects of this increase in volume.

But if you ask our members, they will tell you that they are working harder than ever and that they are extremely concerned about the quality of patient care they are able to deliver. All we ask for is a pause so that we may objectively assess both the positive and negative aspects of this transformation in the hospital sector.

We should also examine the huge negative repercussions in the nursing homes and homes for the aged sector. Budgets in all the homes have been squeezed over the years and we are now seeing layoffs in some of them. This is ironic since it has long been believed that while this system should perhaps not expand, it certainly should not be allowed to contract, at least not until community services are in place. Again we strongly urge a moratorium on further cuts of personnel and services in this sector until a proper funding formula is established.

Our second recommendation is that government proceed with the expansion of community-based services. Currently, just 4% of the provincial budget is spent on community and public health services. We have done virtually nothing to provide alternative services in the community even while we busily deinstitutionalize the rest of the system. District health councils are only now beginning to address these problems, and the promised multiservice agencies which are supposed to coordinate the work of community-based agencies are only in the planning stage.

The Ontario Nurses' Association has recognized for years that community-based services must be in place before institutional services are cut, yet we are moving in the reverse order, deinstitutionalizing before we have a community system. We don't understand why there hasn't been a greater public hue and cry about this issue. We can only assume that the public does not really understand how vital these services are for themselves, their children and their aging parents. We hope that once they do understand through their own personal misfortune, it will not be too late to do anything.

Workers are affected as well by the lack of progress in community health. Governments have repeatedly prom-

ised there would be plenty of jobs in the community once deinstitutionalization took place. This has not materialized, and the downsizing of hospitals has been far more painful than it needed to be.

Furthermore, the work of organizations like the health sector training and adjustment board has been seriously compromised by its inability to find jobs in the community setting for displaced workers. As we speak today, there are layoffs of RNs occurring in community agencies, which causes us to wonder, has there been any planning in this sector at all?

Our third recommendation is to invest in determinants of health. While an advisory committee has recently been established to deal with the issues of health promotion and disease prevention, concrete results will take years to achieve. In fact, there have been reversals taking place in these areas, with a reduction in activation programs in the home sector and core programs and services in the community. This has been largely due to funding difficulties in municipalities, caused in part by the government's expenditure control program. This area is obviously in need of a major infusion of resources. It is the government's responsibility to ensure that health promotion and disease prevention programs are in place and at levels which meet the community's needs.

Our fourth recommendation is that we take a microscopic look at the fee-for-service system, which consumes 27% of the health budget. Much more can be done to bring more salaried physicians into the system, while at the same time we must look at the underutilization of other professionals such as nurses.

It is our view that too much emphasis has been placed on delisting OHIP services. What should be addressed is the fact that other health practitioners can provide the same service at a much lower cost.

We are pleased to see the government finally acting to reduce the number of physicians entering the system. There is little question that there is an oversupply of physicians in Ontario, and this has led us to spend more money on health care over the years than we should have. Certainly reforms are being made in this area, but much more needs to be done.

As with OHIP, we have concerns that a principal means of controlling costs is delisting drug products rather than examining whether the pattern of prescribing drugs is appropriate. We do not believe that it is appropriate to ask consumers to share the cost of prescriptions. In our view, it will only encourage the introduction of user fees in this area. It is our firm belief that while user fees do not prevent the abuse of health care services, they do erect a barrier to needed services for low-income individuals.

Our key message today is that we should now take a pause to evaluate both the positive and negative effects of many years of expenditure restraint in government programs. The economic recovery will allow us to do this more easily than in the past. In other words, we should stop being obsessed with the deficit and the size of government.

In health care, let us preserve what is now left of the



institutional sector until we can objectively determine whether and where further cuts should be made, whether the system should remain in its present state, or indeed whether new expenditures are appropriate.

We also again emphasize that we must finally do something about expanding the community-based system and programs dealing with health promotion and disease prevention, a philosophy we have subscribed to for many years. These programs have been promised to the people of Ontario for years and indeed make good economic sense, as well as serving as an alternative to the institutional sector.

As I said earlier, ONA recommended 10 very sensible approaches which if adopted can reduce expenditures while protecting the level of health care. They are, in summary: use existing resources with improved quality control; shift resources to the community; hold the federal government accountable for Canada's health care; public education; encourage dialogue between providers, consumers and government; recognize registered nurses' generalist role, along with their skills and experience; support the community's health programs; embrace new and innovative ideas; and make hospitals accountable to and representative of the communities they serve.

I can't urge this government strongly enough to pause and examine the measures imposed to restrain public sector expenditures before imposing further restraints. The Premier has said he is open to suggestions on further reforms. We certainly hope this budget session is the start of a dialogue which will ultimately lead us into the future, without further compromising a safe level of health care services.

1610

**Mr Phillips:** It's a very thoughtful presentation, and there's never enough time to discuss it all. The community-based care is one that I personally worry a lot about. I think we run the risk of fooling ourselves and the public as we close the institutions and say, "You can get that care at home," and we don't provide the resources.

I'm really afraid that we are going to do what we did in the psychiatric area. It's a cliché, but true. Everybody knows that and everybody says that. The reason I think you don't see the hue and cry is because it is a lot of individuals. If you can't get a bed in a hospital, you see the person in the hall. If you don't get community-based services, you never really see that person, other than maybe a phone call. We're going to have to watch that one in the future, because it will only really hit us when it becomes larger. I'm leading up to a question. Have you any advice for us on how we monitor this and identify, as legislators, whether there is a problem out there and whether we're responding to it, so that if indeed the alarm bells are going off, we can actually hear them and see them?

**Ms Caissey:** I think one very good way is by involving the front-line workers in discussion, particularly the people who work in both institutions and the community, because both groups see what happens to clients when they are discharged early from the hospital and have no community-based service to fall back on.

Certainly, for a long time we have been asking for more of a voice. For example, during the social contract we got an agreement with the government that we would be involved in some of the subcommittees of JPPC. That has not happened; it does not appear to be happening. If you don't involve the front-line workers and people who are actually doing the care and who can give you examples like the ones I quoted of what is happening to people in their communities, then you aren't going to know what is going on until it is such a massive problem that the public rises up in distress.

**Mr Turnbull:** Your words are very wise in terms of involving front-line workers, because it seems to me that's the lesson that private industry has learned, that going to the factory floor and getting some advice as to how to be more productive has worked quite well. The Japanese have shown us this well.

The health care professionals I speak to in my riding keep on pointing out to me that there's so much wastage in the health care system that they can identify that they would like to see that cut out before we do anything further. Maybe you are asking for more money, but it's not in the cards for you to get any more money, given the seriousness of the debt of this province. But you're saying, "Let's hold the line here and at least understand what we have done so far." That's my understanding of what you're saying.

It has been suggested that if we could cut fraud out of the health care system and also such things as—prescription drugs, for example, that are prescribed for the aged might be sealed into containers and if the actual prescription proves to be the wrong strength or inappropriate, they can't be recycled. Even though they're perfectly good drugs, they have to be destroyed. I've had pharmacists suggest that there may be hundreds of millions of dollars involved in that.

I wonder if you could respond to that. Is that the way we should be looking at controlling health care costs?

**Ms Caissey:** Those are two of the areas you could look at in the area of waste, but they aren't the only two areas. I think you have to look at how we currently deliver medical care, differentiate between what is medical care and what is nursing care, and allow other health professionals, for example registered nurses, to fill the role they've always been capable of filling but have been limited, either by the employers or by other health care professionals, from filling.

It goes back to the voice of the front-line workers. When hospital boards make decisions, there are no representatives from the nursing staff at the board level. In fact, many board meetings still remain closed to the public, so there is no way for nursing, the front-line workers, to speak to the board and say: "If you do that, it will create the following problems. It will not save money. In fact, the costs will be more."

To give you an example of the types of things that currently cost money—there are many areas where treatment is not appropriate, not effective, but just to give you a quick example from the social contract—we are seeing our full-time members being given their unpaid leave and being replaced by part-time workers, which



means that at the end of the fiscal year the hospitals will not have saved any money. We will be into more bed closures to balance the budget and the health care the people in this province receive will be even less. It all goes back to the front-line workers having access to the people who make the decisions within the health care agencies.

**Mrs Haslam:** I agree with point 1, point 2, point 3, point 4 and point 5 in your presentation, because I think you've hit on everything that is needed within the health care system. I share with Mr Phillips his question and his concern. He's asked one of the questions that I was interested in, around flat-lining, and Mr Turnbull asked about flat-lining, whether that was what you were saying you were asking for. Those two questions having already been asked, my question is about the time lines.

You say that in health care whatever is now left of the institutional sector should be preserved until we objectively determine whether and where further cuts should be made. Time lines: How long are you looking at? If we were to say to the treasury board or to the Treasurer, "Don't cut health any more; hold the line at health," which is very difficult if we're going to have to find additional moneys if the revenues are down, "Don't cut health. Make health one place we don't cut. Make social services some place we don't cut. Let's look at the human side of where those cuts are," you're talking about something specific, and I wondered if you had time lines.

**Ms Caissey:** I don't think I can give you time lines, six months or a year, because part of it depends upon how quickly some of the other reforms going to more community-based care go ahead. What is happening now is that this strategy has not gone ahead but the downsizing has.

**Mrs Haslam:** I agree.

**Ms Caissey:** Certainly you're right. We do not think you need to put more money into the system, but you need to look at how it is currently being spent and whether it is most effective.

**Mrs Haslam:** Actually, I didn't say we didn't have to put more money into the system; I said we can't put more money into the system.

**Ms Caissey:** I know. But we have said for many years, I think going back to about 1974, that there is enough money in the system but it is not correctly allocated—

**Mrs Haslam:** It's not being managed well.

**Ms Caissey:** —and people are not accountable for the money they receive.

If you were going to put a freeze on any further downsizing, then there would have to be an extremely aggressive evaluation of what the people in the province need in the way of health care, the best way to deliver it and ways of doing it more cost-effectively. Right now we are basing all of the reforms in health care on the bottom line. We are not looking at the future and the best ways of making sure that the costs stay contained in the future and of giving good care.

**The Chair:** I thank the Ontario Nurses' Association for making its presentation.

#### ONTARIO PUBLIC HEALTH ASSOCIATION

**Ms Jane Underwood:** My name is Jane Underwood and I'm president of the Ontario Public Health Association. This is Mr Peter Elson, who's the executive director of the Ontario Public Health Association. Thank you very much for having us this afternoon and thank you for specifically asking us to speak to the Ontario Fair Tax Commission.

First of all, I'd just like to remind you that the Ontario Public Health Association is a 3,000-member charitable organization that works to strengthen the impact of people who are active in community and public health throughout Ontario. Our members are drawn from every community health discipline and location throughout the province. They include people from community health centres, public health units, universities and community agencies.

The impact of social and economic policies on the health of Ontarians is a key area of concern for the Ontario Public Health Association. Our association holds the position that a more equitable distribution of the province's financial resources is needed to ensure the fundamental determinants of health—food, shelter, healthy growth and development, employment, education and income—all of which are within the reach of everyone within our province.

Infant mortality rates are a recognized indicator of population health. Babies born to the parents in the poorest neighbourhoods are twice as likely to die before their first birthday as babies born to parents in the richest neighbourhoods. This is not restricted to children. The death rates for men between the ages of 65 and 70 decline steadily as the level of earnings in the years prior to retirement increases. The death rates at the lower end of the income scale were about twice as high as the rates at the higher end of the income scale. Low-income people also have more years of ill health than people with higher incomes.

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These results are based on a Canadian study which covered half a million people, and for each individual data for almost a quarter century of their lives have been drawn upon. The evidence that health is determined by income distribution is clear: Taxation policy is health policy.

A progressive system of taxation has been identified as one of the most important instruments by which governments can ensure that everyone has an adequate level of income to meet their basic needs. Unfortunately, the present tax system in Ontario is a regressive one which serves to increase income disparities. Over the past two decades, a series of tax reforms initiated at federal and provincial levels has resulted in a significant shift of the tax burden from corporations and high-income earners to low- and middle-income groups.

Therefore, the Ontario Public Health Association welcomed the creation of a Fair Tax Commission to address the inequities inherent in the province's taxation system, because income and its distribution are fundamental determinants of health. Studies have demonstrated



that countries which cannot be considered prosperous have healthier citizens where the income is more equitably distributed. There is a total lack of political will to reform our taxation system in the context of securing basic needs for our whole population, as distinct from a never-ending cycle of tradeoffs. The intent of the Fair Tax Commission to reform education funding is one example of how systemic inequities can be addressed.

We have provided the commission with the submission of our fair tax remarks.

**Mr Peter Elson:** The expanded retail sales tax that's proposed will make it even more difficult for low-income families to afford the food and clothing needed to maintain good health. Increased numbers of economically disadvantaged families would be forced to rely on food banks and charitable organizations to meet their basic health needs.

OPHA recommends that the Treasurer does not proceed with the implementation of the commission's proposal for an expanded retail sales tax. OPHA also calls upon the Treasurer to consider progressive alternatives to the existing retail sales tax which increase the capacity of the personal income tax system to address income disparities.

Particular forms of consumption taxes that pose a barrier to health to many Ontario residents are the taxes imposed on personal hygiene and health care products, including toothpaste, dental floss, soap, sunscreen, feminine hygiene products and condoms. The failure to use many health care products will inevitably result in the increased incidence of preventable diseases and a consequent increase in costs to Ontario's health care system. OPHA calls for the abolition of the retail sales tax on all essential health care products and also calls upon the Ontario government to lobby for the removal of the GST on these items.

OPHA reaffirms its support for alcohol and tobacco taxes as a public health measure. We call on future modifications to these taxes to be guided by health outcomes, not an assumption that tax reduction will deter smuggling, which we do not believe would be the case. Now that the smuggling system is entering its retrenchment phase, that decrease in the taxes will not act as a deterrent.

At the same time, however, OPHA recognizes that taxation alone is not a sufficient means of reducing tobacco consumption among Ontarians. Measures to reduce the incidence of poverty and its attendant stress and health risks, such as social assistance reform, full employment, education strategy and progressive changes to other aspects of the taxation system, are required to address this serious health problem.

There are a number of reforms that need to be implemented in order for this shift to occur, including changes in the way in which the present taxation system treats disabled Ontarians. People with special needs resulting from disabilities can claim various forms of institutional and attendant care as disability-related expenses through the federal medical expenses credit. However, the existing credit discriminates against care arrangements that would allow many disabled Ontarians to lead normal lives in

their communities. Under the current medical expenses credit system, the total cost of full residential care in an institution can be claimed as a deduction by a person with a disability, while non-residential care, a much cheaper alternative that allows people to remain in the community, is not claimable at all.

Attendant care, which also permits special-needs people to remain at home, is only claimable up to a ceiling of \$5,000. Anyone who claims this allowance also forfeits his or her right to claim the disability credit.

The primary result of this existing policy is to increase the incentive for disabled people to move into or remain in chronic care hospitals, at tremendous expense to taxpayers, rather than living in the community where they are subject to unfavourable tax treatment.

OPHA calls upon the government to lobby for changes in the medical expenses and disability credit and specifically calls for the full cost of community-based care to be deductible under the medical expenses credit and for consumers of attendant care to retain their disability credit. These changes will result in considerable savings to Ontario's health care system while enabling many special-needs people to lead fuller, more productive lives in Ontario communities.

**Ms Underwood:** The current taxation system places a tremendous burden on economically disadvantaged Ontarians. Even people whose incomes fall well below the Statistics Canada poverty level are required to pay income taxes. A single mother with two children, for example, was poor if her 1991 income fell below \$25,421. However, she was required to pay federal income tax when her income reached \$11,601 and Ontario income tax when her income reached \$21,710.

Since 1982 the share of income that the poorest 20% of the population pay in income tax has risen faster than for any other income level. The share of taxes paid by the lowest 20% of income earners doubled from 2.8% to 5.8% of income from 1982 to 1990.

Therefore the Ontario Public Health Association recommends that in this, the International Year of the Family: First, families and individuals with inadequate incomes, as defined by Statistics Canada after-tax low income cutoff, should not pay personal income taxes to either the federal or provincial government. Second, the federal and Ontario governments should cooperate to reduce marginal tax rates for people with low to moderate incomes, the working poor.

The Ontario Public Health Association commends the Fair Tax Commission for its recommendation that taxation be used as a method of addressing environmental concerns. OPHA supports the introduction of taxes on environmentally hazardous forms of energy and toxic pollution which fail to reduce the emission of carbon dioxide and other pollutants into air, land and water. While OPHA supports deposit-return taxes on food and beverage containers, steps should also be taken to provide incentives for minimal or return of packaging by manufacturers.

**Mr Elson:** Health reform: Community health centres provide a comprehensive response to specific populations.



Public health units are the only structure in place in Ontario with a mandate by the provincial government to promote health and prevent disease. This activity covers the whole province and every community within the province.

Public and community health workers collectively collaborate with community literacy groups, schools, social service agencies, community residential facilities, commercial food and recreational facilities to prevent disease, educate, foster healthy and supportive environments, and inform and refer people to other human service organizations in their community.

Public health has been called the first line of defence in a community and it's the first line of opportunity to create a health community.

Unfortunately, the 8.2% increase to community health in last year's budget did not reach Ontario's 42 health units which serve the entire population of the province. Those budgets were held to a 0% increase. The income disparity referred to earlier is nothing compared to the disparity between the government's talk of support for community-based services and the reality. Our members are feeling alienated from their government and devalued by it.

Both the way, not the purpose, they have been affected by the social contract and the failure to address disentanglement in this sector only serve to remind us that fiscal restraint and health reform are viewed by this government as being worlds apart. Most attempts at health reform have been negated by fiscal restraint.

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**Ms Underwood:** Healthy communities: Healthy communities includes supporting people who are confronted by illness to remain economically and physically independent within their communities as much as possible. A key element of this support is access to drugs to cure or manage illness and enhance quality of life.

OPHA wishes to acknowledge the government's commitment to reform the provincial drug programs to better manage the system and to ensure access to people who need access but are now not covered. OPHA commends the government for its important stand against copayments or user fees for prescriptions. The move away from this regressive action is most welcome.

However, we urge action to accommodate people who require drug coverage; for example, people whose income places them above social assistance programs but whose drug costs place them in poverty, including people with catastrophic and chronic illnesses whose needs are not now adequately addressed.

In addition, new drugs must be added at a much quicker rate, especially to provide more options for people with life-threatening illnesses. Approved drugs for HIV take six months or more to be included. Adding drugs will raise drug costs, but not adding beneficial drugs as they become approved harms the health of people dependent upon new drugs to be available, thus increasing health care costs.

Further, we caution the government not to rely too heavily on the process to delist medications from the

Ontario drug formulary in order to save moneys. As a cost-cutting measure, it has limited effect and focuses on the individual user rather than seeking broader systemic change to reduce costs. Cost-reducing measures need to focus on physician prescribing behaviour and the role of the pharmaceutical industry. The role of government in negotiating drug prices with pharmaceutical manufacturers was not discussed as part of Drug Programs: Framework for Reform. Emphasis was given only to strengthening the pharmaceutical industry in Ontario. The Ontario government's importance as a customer should be addressed.

We also wish to acknowledge the recent support by the Ministry of Health for the Ontario Healthy Communities Coalition and the corresponding realignment of the health promotion grants program. The support this project has received will foster healthy public policy at a local level, intersectoral collaboration, and increase community participation in decision-making. It also values the capacity of communities to define their own health issues.

In summary, the Ontario Public Health Association recommends reforming the Ontario tax system in a way that addresses determinants of health, namely, equitable access to education, decrease income disparities, support healthy environments and universally provide adequate shelter and income.

OPHA recommends reforming the health system in Ontario by reallocating resources to community and public health, providing equitable access to community care, and reforming drug purchase and prescribing practices, not consumers.

Finally, the Ontario Public Health Association recommends supporting healthy communities by maintaining tax rates on alcohol and tobacco products, continuing to support healthy community initiatives and supporting community-based injury prevention initiatives.

**Mr Turnbull:** I wonder what you think about the move by Premier Wells away from all of this multiplicity of support programs to looking at a guaranteed minimum annual wage as a way of addressing these problems of the poor.

**Ms Underwood:** We would support that position if it equitably distributes. But the point we're trying to make here is that it depends on where you really set that level of income for those people.

**Mr Turnbull:** I haven't been at every meeting of this committee, but while I've been sitting here, I haven't had anybody come here and say, "We'd like to pay more taxes," or "We think it's fair." Everybody has come with varying degrees of credible arguments saying, "Leave us alone" or "Give us more."

The fact is that this province has doubled its historical debt since Confederation in the last three years. Clearly, whether we want to or not, there's no capacity to continue piling up debt at that rate, because Ontario became the fourth-largest borrower in international markets in the world. Ahead of it only last year were the World Bank, the kingdom of Sweden and the European redevelopment bank. We're in the Olympics in that respect.

That's the magnitude of the problem the government



faces, and while I often don't agree with the way it goes around trying to fix the problem, I notice the difference in the questioning that the government is making to presenters now as compared with when it first became the government. The bottom line is, there's no more money. I'm just trying to seek ways you think we can address this in a way that works and, quite frankly, doesn't bankrupt the province.

**Mr Elson:** What we're saying in our brief is that the only system we have which is not regressive is the personal income tax system. If we have something like the proliferation of the retail sales tax, it is regressive. Poor people pay exactly the same rate of retail sales tax. It isn't the mechanism to redistribute.

**Mr Turnbull:** I understand. One of the problems is that our marginal tax rate in Canada in the middle-income levels is very, very high compared with most countries in the world. It's proving to be a disincentive to stay here for the entrepreneurial people who create the jobs upon which all of our wealth is based. It's a question of finding that fine balance. That's why I'm asking you.

I think Premier Wells is on the right track with a guaranteed annual wage, and get rid of all of the other programs. We've got so many programs being administered by so many bureaucrats today, and you need a road map to understand—you know this in your profession—all the different support systems.

There are some people who are completely falling through the seams. They're not getting the support they need. Then there are other people who are, quite frankly, abusing the system. I'm really trying to bring out your feelings on this.

**Ms Underwood:** Actually, we don't have a lot of evidence that there are huge numbers of people trying to abuse the system, particularly at the lower levels. Also, although you're correct in stating that Ontario does tax heavily in the middle-income range, I don't think our track record is so horrendous against some other nations. There are some statistics about that. For example, the Scandinavian countries, Germany and the Netherlands all tax the middle-income higher than Canadians do.

**Mr Turnbull:** This is one of the problems, trying to compare apples with apples. I'm not talking about the historic numbers. Sweden was historically just about the highest-taxed place in the world. They've drastically pulled back, because they've recognized that they hit the wall and it was declining; the people had no incentive to work harder. I assure you, when you take all the levels of taxation, be it provincial, municipal, federal, and then all the fees, we are just about at the top of the league.

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**Mrs Elinor Caplan (Oriole):** That's not true. It's important when we're talking to delegations that we be factual, and we were just presented with the OECD numbers that showed that Canada was in the mid-range around the world and, in comparison with other G-7 nations, again right in the middle. To make the statement, sir, that it's right at the top—

**Mr Turnbull:** I did not say it was right at the top.

**The Chair:** Order. Perhaps the members would like

to carry on afterwards. We have some presenters here.

**Mrs Haslam:** I love it. Let them fight.

**Mrs Caplan:** Check Hansard. We've got to be accurate.

**Mrs Haslam:** I know the chart you're looking for. It's right there, and you're absolutely right.

**Mr Turnbull:** But if you want to talk about accuracy, just talk about the facts that you presented—

**Mrs Caplan:** Come on.

**The Chair:** Order, Mr Turnbull, Mrs Caplan. I have no doubt that from time to time members make accurate statements and they make inaccurate statements, and that's regrettable, to say the least. However, we must allow the presenters here an opportunity.

**Mrs Haslam:** I agree with you. I'm concerned about the support and money going into communities. With the downsizing of hospitals, the deinstitutionalization, I agree that there is some concern regarding the support services out there. I'm interested that you are commending the Ministry of Health for the Healthy Communities Coalition funding. I see that as part of what this government is about. I agree it's not going very fast and we're all in a situation where the money isn't there, but I was pleased that you've mentioned the Healthy Communities Coalition, because I see that as one part of what we're doing in communities to try and bring those changes around.

On page 10 you talk about, "As a cost-cutting measure, it has limited effect"—we're talking about the Ontario drug formulary—"and focuses on the individual user rather than seeking broader systemic change to reduce costs." I wonder if you would explain how. You're saying, "Cost-reducing measures need to focus on physician prescribing behaviour and the role of the pharmaceutical industry." Have you had any ideas about how that could be brought about?

**Ms Underwood:** I think some of the statistics that the government has collected in the past that show prescribing patterns of physicians could be addressed.

**Mrs Haslam:** I know; I've seen them. I'm just wondering if you could elaborate in saying how we could focus on the physician prescribing.

**Ms Underwood:** I think one of the ways to do it is monitor and publish the kind of prescriptions they do write.

**Mr Elson:** I'm not aware if a study of this nature exists, but it might be worthwhile to look at the prescribing practices of physicians who operate under salary within community health centres as distinct from physicians who operate independently. You may find distinctly different prescribing patterns.

**Mrs Haslam:** So this could all fall under a better-educated public also, along the idea of not asking for the prescriptions, not accepting the additional tests and better education of the public about the costs of health care too.

**Ms Underwood:** What we're saying is that you're really focusing on the victim end of this system, that you really need to focus on the physician behaviour itself. There could be some education of people, but I think people are pretty aware of trying not to take medications.



I don't think it's their fault.

Another issue is that there are a lot of pharmaceutical-sponsored physician activities that really put into question where the best interests of physicians are.

**Mrs Caplan:** I found myself in agreement with much of what you were saying. There is an argument that's made on the sales tax, that it's not as regressive as we have always believed because the more money people have, the more they buy, so wealthier people pay more because they purchase more and therefore they bear a greater burden. Similarly, the wealthier people are, the more expensive the items are that they buy; therefore, the more tax they pay on the luxury items. So on the notion that sales tax is a purely regressive tax because everyone pays the same rate, there are those who would argue that in fact it is not as regressive because of the progression I've just outlined to you. I wonder if you've thought about that or heard that argument.

**Ms Underwood:** We've heard that argument, and there's certainly some merit to the argument. The question is people being taxed on necessities they really have a hard time not using, although you might say that a condom was not a necessity—

**Mrs Haslam:** No, we all agree with that.

**Mrs Caplan:** Remember who you're talking to.

**Ms Underwood:** I apologize. I do remember who I'm talking to.

**Mrs Caplan:** That's okay. I was just kidding.

**Ms Underwood:** You're right that people who have lower incomes don't pay a lot of tax on luxury dining room suites. You could get those taxes in other ways.

**Mrs Caplan:** Let me talk about efficiency in government services, something I don't think you'll find anybody arguing with. They'd really like to see more of it and so would I.

One of the arguments on the sales tax is that if you have a broad-based sales tax that will effectively tax everything, you don't need the administration, the bureaucrats, to deal with the exemptions, because it's quite a large bureaucracy required from that standpoint. Then what you do, and we've seen it done in a limited way, is have a cheque going out to the needy to refund, if you will, what they have paid in sales tax.

How do you feel about that as a concept, the one that says everybody pays and then those who are at the lower end of the income scale would actually get a refund? Apparently that's administratively easier to do than to exempt those kinds of items you have mentioned. I was looking for this. Have you thought about that?

**Mr Elson:** Just a couple of things. One is that in our deputation to the Fair Tax Commission we indicated that if this was the case, it doesn't take away the fact that many people live so close to the poverty line that waiting for that cheque—in a sense there's a benefit, but they only get the benefit after a fairly substantial delay.

Within that too, the regressive nature of it is the actual proportion of income that people have to pay on those necessities. Even though people may have more disposable income at higher levels, there's still proportionately

less that they have to pay for necessities. At the lower income levels there's a much greater proportion of their income they're having to pay for those.

**Mrs Caplan:** But if the refund or the rebate was high enough to cover that, would it be worth the administrative saving? One of the concerns I had about the federal GST when it was implemented was that it was costing a half a billion dollars to administer the tax.

**Mr Elson:** And it has been at least that.

**Mrs Caplan:** At least that and probably more. That's a tremendous burden on the taxpayer, and so the thought was, if you could eliminate that by having a broader-based tax, giving back to those who were in need the refund, that might be administratively more attractive and less expensive.

I haven't personally come to a conclusion in my own mind, but I'm wondering if you've looked at those options, because you've identified the impact of particularly sales tax, consumer taxes, on those who can least afford to pay them.

**Ms Underwood:** To be honest, I can't speak to which would be less expensive right now. That sounds like a little bit of an administrative nightmare. Having to refund sounds like administration too, doesn't it?

**The Chair:** I want to thank the Ontario Public Health Association for making its presentation.

**Mrs Caplan:** For your information, as a point of order, on my previous emotional outburst, I point out to the committee that in the DRI-McGraw Hill presentation there's a graph that shows government revenue as a share of GDP, which is effectively how much you're taxed. There's a comparison of the low-tax nations and the United States, which is in the low-tax nations, and the other OECD nations, including the G-7 countries and our competitors, and it shows Canada effectively in the middle. I just put that on the record.

**The Chair:** Thank you, Ms Caplan. I must inform you that's not a point of order, although we do find that very informative.

**Mr Turnbull:** That's misreading the numbers because that's total revenue, Elinor. That is not income tax.

**Mrs Caplan:** That's all taxes.

**The Chair:** We will not continue this debate at this time. Order.

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#### MOTOR VEHICLE MANUFACTURERS' ASSOCIATION

**Mr David Adams:** I'd like to introduce the representatives from our member companies who we have at the hearing today. With me are Mr Norm Stewart, who is vice-president and general counsel from the Ford Motor Co of Canada; Ms Agnes Di Leonardi, who has just come on as counsel at the Ford Motor Co of Canada; Mr Brian Swift, who is senior engineer, environmental policy, with General Motors of Canada Ltd; and Mr Bob Murray, who is senior tax counsel at General Motors of Canada Ltd. My name is David Adams and I'm the director of policy development with the Motor Vehicle Manufacturers' Association.



I'd like to start by indicating that we do appreciate the opportunity to come before the committee today. Our industry has been and will be the economic engine of the province, and we believe it's important for members of all political stripes to be aware of the issues that are facing our industry at this particular point in time.

I'd like to include the members from my association in the discussion today. I turn the presentation over to Mr Norm Stewart from Ford Motor Co of Canada.

**Mr Norm Stewart:** Our brief and our remarks today are broken into four components. First, we'll try to give you a brief overview of what we see as the current economic state of our industry, both in Canada and in North America. Then we'll provide you with comments on the tax for fuel conservation and what we believe are more effective and environmentally beneficial alternatives. We will then move into a review of our concerns regarding the 1993 budget's extension of the retail sales tax to warranty and extended warranty repairs and to insurance premiums and employee benefits. Then if we have time remaining, we have some other tax initiatives we'd like to put forward.

In terms of the current state of the industry, as you'll note in our brief, car and truck sales in the United States and Canada are summarized. While sales in North America generally have reached an overall figure of 15.4 million units in 1993—that's up 8.2% and that's good news for North America—Canada, on the other hand, with its component of North America, declined for the fifth straight year in a row and declined by 3.3% from the year before.

That's troublesome for us because we have a disproportionate share of the automotive investment here in Canada compared to the United States. In order to sustain that level of investment we really need to promote high sales here, so we want to get those sales back up again. We are optimistic that we will see some improvement in sales this year, and the general prediction is somewhere in the neighbourhood of an 8% growth. Again that's good news but still it's significantly below the sales levels in our record year of 1989, whereas the US market is going to start to attain this coming year, if things work well, levels of that 1989 rate. You can see America has done far better than us, really, and that's our challenge here.

What we're going to try to talk to you about today are some of the policies that we think are necessary to attract investment to this province. If we attract investment, we hope then that we can create jobs, that we can sustain wealth and that we can support the social programs that we want here. The last thing we want is tax policies and government policies that can act as barriers to investment, because that's only going to prolong our economic recession.

With that point I'll pass it over to Brian Swift, and we'll move directly into our talk on the tax for fuel conservation.

**Mr Brian Swift:** We'd like to address one of the concern areas in terms of tax policy, that being the tax for fuel conservation as it exists in the province today. We don't believe it is an effective environmental tax. Its aim is notionally at fuel economy, not fuel consumption,

of new vehicles. It has on that basis no impact on smog in that all vehicles are equivalent. I'll explain that further if indeed it's necessary.

This fuel economy aim in our opinion misses influencing actual fuel consumption or CO<sub>2</sub> emissions both of new vehicles but basically of all vehicles in the entire fleet. The proponents of the TFFC argue that you can only do so much, ie, it has an effect in terms of new vehicles. That's the first piece of the puzzle.

We submit that purchase intenders have specific needs when they come to look at buying a new car, ie, family of six needs a larger vehicle, or a small business owner may well have a specific requirement for a four-wheel-drive vehicle. A \$75 tax on that basis just doesn't influence those buyers. Indeed, if anything, that additional tax at point of sale has the tendency to delay the purchase decision of a new vehicle.

People holding on to their vehicles longer thereby delays the natural retirement of older vehicles. This in itself has an adverse consequence: older vehicles in the fleet, on the road longer. These older vehicles are recognized as inordinately contributing both NO<sub>x</sub> and VOCs, the precursors to smog that we should be concerned about, that we typically find concern about in terms of the urban Toronto area and southern Ontario region.

On this basis, as well as the failures witnessed in the practical application of the TFFC in its effect in the last two years, we respectfully submit that the policy and its implications are poorly thought out. We believe, as the industry, there are some better policies that are available to address both smog and global warming.

In regard to smog, as you can see contained in our proposal, we've laid out some ideas in terms of support for an inspection and maintenance program for vehicles on the road in the province today that would mandate basically repairs of those vehicles that have high emissions. That is probably one of the most cost-efficient ways to look at the motor vehicle sector emissions problem or question and make improvements.

The second notion in terms of improvement towards smog is a concept called a tailpipe emissions premium. We've laid out some policy ideas there that we certainly think are deserving of merit in terms of government policy. Indeed, the tailpipe emissions premium has the opportunity to provide a revenue stream to the government.

As a final initiative in terms of smog, we believe there are measures in terms of enhancing the value of older vehicles, ie, a scrappage program, to naturally encourage owners to move away from their older, high-emitting vehicles and allow them to be scrapped, thereby providing substantial improvement.

In terms of a CO<sub>2</sub> focus, I'd like to talk very specifically about gasoline taxes. We've contained in our exhibits a chart that illustrates gasoline price comparisons with the US and Canada. This is very appropriate because the fleets are quite similar. Basically, in the decade 1980 to 1990, we saw prices in this country increase more than 30 cents a litre. In the US, they actually fell 2.6 cents a litre. Contrast this against the fuel consumed by the



average vehicle in each of the respective country's fleets—by the way, the fuel a vehicle consumes is directly proportional to the amount of CO<sub>2</sub> it emits. We submit on the basis that gasoline prices went up so high, Canada saw gasoline consumption on a per-vehicle basis fall 28%, some 20% more than occurred in the US.

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Finally, we'd like to leave this area of the presentation and talk about the benefits that carbon taxation offers. Again, we believe it could be conceived as an effective tool to also reduce CO<sub>2</sub> emissions because of its broad application in all sectors. In Ontario, we need to encourage development of further awareness, to evaluate opportunities to ensure the least disruption to the Ontario economy, as we see development of carbon taxation as a concept on an international basis, ie, implementation in tandem with those jurisdictions.

I now turn it over to Bob Murray, who's going to talk a little bit about some of the more detailed aspects of taxation in Ontario.

**Mr Bob Murray:** It's my task to talk about a few of the measures that were introduced in the May 19, 1993, Ontario budget, and then a few other issues that are of special interest to the Motor Vehicle Manufacturers' Association.

The first issue I'd like to raise with you is the extension of retail sales tax in Ontario to warranty parts and labour. It's of great concern to manufacturers in Ontario in the automobile industry that this happened. One thing we look for from the Ontario government is leadership with respect to how tax policies will affect automobile manufacturers. It's the type of measure that could have many other provinces rapidly expand their tax base by also taxing warranty parts and labour.

The great concern we have with this tax is that in effect we see it as double taxation. At the time a purchaser purchases a vehicle, there would be included in the price an amount which would represent the anticipated future cost of warranty repairs on that vehicle. If you end up taxing those warranty repairs a second time, in effect you have double taxation.

We also note that there is a retroactive aspect to the way this tax has been imposed, because there are cars on the road right now that are subject to tax on warranty repairs which weren't priced with that included in the original pricing.

The May 19 budget spoke about jobs and investment in Ontario. One of the great concerns to the automobile industry, and of course the manufacturing sector in Canada is focused in Ontario, is the extent to which health care costs and employee benefit costs have increased because of the extension of the retail sales tax. We consider ourselves to be leaders in providing employee benefits. Many have been negotiated at lengthy bargaining sessions, but we still feel we are the leaders in the industry in providing employee benefits. It is an additional cost and at some point in the future obviously there will be some reckoning.

I'll give you a quick example. There's an incentive in the retail sales tax to acquire manufacturing and process-

ing equipment, because there's an exemption. There's no tax on it. Now there's a tax on acquiring labour. If you have an employee benefit plan or some other measure, that's now subject to the retail sales tax. Those types of measures are inconsistent with a budget which promotes job growth. Not to recognize an exemption, for example, for manufacturing and processing labour while recognizing it for capital is in our view unfortunate.

We also have comments in our brief with respect to sales tax harmonization. Briefly, the Motor Vehicle Manufacturers' Association is in favour of a harmonized sales tax system in Canada. We have incurred substantial costs with respect to implementation of the GST system. We don't want to debate whether it's a good system or a bad system, but we would like to say that it is a system we are now committed to. To the extent that provinces are able to agree with the federal government on a harmonized system, we would be totally supportive of that.

A small point we'd like to make is with respect to the application of retail sales tax to coupons. We'd like to see a change in the legislation to allow a drawback of tax on coupons. We just find that to be a funny situation in the way it applies, and in our brief there's something about that.

We'd also encourage the government to implement whatever measures the government could to increase investment in Ontario. The industrial base has been eroded in the last number of years. Formerly there was an Ontario capital cost or current cost adjustment program which provided incentives to manufacturers to invest in Ontario. That is important in today's economy, particularly with the trade agreements that have been implemented.

One measure we want to comment on with respect to the Fair Tax Commission is the recommendation to eliminate the manufacturing and processing credit. We consider that to be a very unfortunate recommendation. We disagree with it. We think there have to be incentives to continue to manufacture in Canada, but most particularly in Ontario, and we would encourage the government to disregard that recommendation.

The last comment I would make is with respect to the deductibility of capital and payroll taxes. You may be aware that the federal government has proposed that something may happen in 1995 with respect to limited deductibility or establishing a threshold deduction limit for those types of taxes. We strongly encourage all provincial governments to work with the federal government to manage that system so that whatever the capital and employment taxes are, they are deductible. In effect, there are business costs. There is something that is incurred to earn income, and under general tax principles we believe they should be deductible.

Those, very quickly, in rapid-fire succession, are the points we've raised. We have not provided a detailed review of the Fair Tax Commission report because we have not yet had the time to consider it fully and provide a thorough response to it, but we certainly would be willing to at a future date. Those are our comments, if anybody has any questions.

**Mr Norm Jamison (Norfolk):** I find that as each and



every presenter—it's natural, I suppose—makes his or her case, there's always a certain slant to the case itself, but that's quite understandable.

When you talk about disproportionate sales, it could mean one thing or another. I have difficulty in understanding that, since most of the major auto makers have made some significant investment in Mexico, and I don't think we sell a tremendous number of cars in Mexico.

**Mr Stewart:** It maybe suggests what we're talking about: disproportionate investment. If you look at all of North America, the United States in terms of sales is roughly 90% of the whole market and we're 10%. We have roughly 17% of the automotive investment here. That's all the plants and equipment.

**Mr Jamison:** What would Mexico be with the investment that's going in down there?

**Mr Stewart:** I don't have a figure, but it's substantial. What we're saying is us relative to the US. I don't have an answer for you on Mexico.

The issue is, in order for us to sustain that level of investment or even create more investment, you have to sustain sales in this marketplace, otherwise what you get are congressmen and senators and UAW in the States saying, "Don't put investment up in Canada, put it down here in the States."

**Mr Jamison:** I was always under the impression that things like OHIP significantly increased our competitiveness in our having that system, whereas in the United States, at least up until this far, those medical coverages were very expensive in the plants. I don't know what we hold down the road, but I thought that was a real factor also.

**Mr Stewart:** You're right. Two major things: exchange rates and government-subsidized health care give us, in a sense, an advantage over the United States, but the United States workers, unions and the companies have worked very well at improving productivity to the point that—we still have advantage here, there's no doubt about it, but they've narrowed the gap.

**Mr Jamison:** I know it's a very competitive situation. I realize that, and the government's ability, to work in what we like to call a partnership arrangement. I think it's been evident through the Big Three anyway here in Ontario. I believe they spent in total over \$500 million invested in the auto industry in Ontario as we normally know it to be.

**Mr Stewart:** You're right, it's a lot of investment by the three companies, but we tend to invest for cycles, for new products coming on board. As those investments are announced, people are already thinking about how to win the next round of investment, and that's what we're always worried about. If we lose that competitive advantage, then the next round may not be here and you may see the thing ratchet down.

**Mr Jamison:** Much of that was simply to maintain jobs. There weren't new jobs. This is the kind of competitive environment we're talking about.

In the area of fuel taxes, how far have we actually come on alternative fuels? GM, for example, is doing a great deal of study into electric cars for civic use. Where

are we on that? This has been the talk of the town for many years.

1710

**Mr Swift:** It depends very much on where the environmental concern exists. Indeed in southern California, where there exist unique geophysical conditions and they have a significant smog problem, significantly different than anything that exists in Canada, we have developed, based on the Californian air resources board mandate, electric vehicles for sale in that state by 1998. Indeed you're seeing some debate in terms of the technology, is it ready and so forth, and that's very specific to the argument of those vehicles for use in southern California.

**Mr Stewart:** But they're technically limited, though.

**Mr Swift:** Very much so. The idea of possibly bringing that technology and implementing in Canada is quite a different sphere of thinking. The electrical discharge efficiency of batteries in cold climates is not something—there's a significant loss of range. The low-rolling resistance tires on snowy roads present problems. There are no defrosters in those cars. It's not something that would be appropriate for Canadian climate use on the basis of what you and I expect of a vehicle and how it performs today.

**Mr Jamison:** Once that implementation were to take place in the proper climates, would that not bring the pressure on the use of—even the price of—oil down, potentially?

**Mr Swift:** The price of gasoline? No, our feeling is that there are so many other uses for gasoline in general, we don't think demand, at least motor vehicle demand, necessarily drives it to that great an extent.

**Mr Jamison:** Then there's always the cartel to deal with too.

**Mr Swift:** Exactly. With the pricing of oil, there are a number of variables there. Natural gas offers an opportunity indeed.

**Mrs Caplan:** Could you just expand a little bit on your comments about the tax on benefits, what effect it has had on your industry? I believe the tax is 8%. It was brought in in the last budget.

**Mr Murray:** I'm going to respond personally to that. Effectively, it is an 8% tax, although it is more than 8% in the sense that there is also a premium tax in Ontario with respect to insurance benefits which is payable by insurance companies. To the extent that you have what is called an unfunded arrangement, you will also be deemed to be an insurance company for purposes of that premium tax.

**Mrs Caplan:** Unfunded. That's where a company self-insures?

**Mr Murray:** To give you an example, many companies will pay the benefits for glasses, vision care. The company may pay that directly as the employee submits a claim for that vision care. That's an unfunded arrangement. There's no pool segregated to pay that.

**Mrs Caplan:** And you haven't contracted with a company to do it?

**Mr Murray:** You may contract to provide the service



to administer paying the cheque but, apart from that, there's no pool set aside or there's no insurance company willing to pay the benefit if the company were to be bankrupt at any time.

It's a substantial cost because as an industry, and Norm has mentioned, we manufacture a lot of cars, a disproportionate share for North America. It is an additional cost every time we have an employee who now has a new benefit. Of course that is something that has to be priced into our total cost in our competitive structure.

**Mrs Caplan:** What's happening? Are you going to be reducing the benefits? How are you going to cope with that?

**Mr Stewart:** It varies, because the largest proportion of our workers is unionized. We've negotiated those benefits with them so it isn't a matter that we could unilaterally change the program. We'll have to talk these things through in future rounds of negotiations.

**Mrs Caplan:** Are you putting those on the negotiating table as a result?

**Mr Stewart:** Certainly at the last round of labour negotiations—not on this particular aspect of it—the CAW was as cognizant as we are that we have to administer these programs as efficiently as we can. They want the level of benefits to be there, but they suggested, as much as we did, ways to try to streamline things, which I was encouraged by. I thought that was very positive.

**Mr Murray:** I'd like to add a couple of comments about it. One is, it's trite to say it, but sooner or later, the cost of providing those benefits has to be priced into the product, so that becomes part of our competitive situation, not simply Canada versus US but in terms of the Motor Vehicle Manufacturers' Association. We manufacture in Canada; a lot of our competitors don't. If they don't have those costs, that is one of the factors that becomes quite important. We employ people here in Ontario and across the country.

The second thing is, we would stress the point that there is a mix of issues. It's easy to pick one issue or two issues and look at them in isolation and say this is good or this is bad for raising taxes or for industry, whatever point of view you want to take. But it truly is the mix, and this was Norm's first point: All things looked at as a total package, the package has to be conducive to manufacturing cars in Ontario for us to continue to be able to manufacture cars in Canada. Second, the total package, we hope, will promote further sales of cars in Canada. We are coming out of a recession, but unfortunately it has been a difficult time for our industry in Canada.

**Mrs Caplan:** Were you consulted at all or asked about what the tax on benefits would be before it was brought in?

**Mr Murray:** I'll give you a frank response to that. We were not consulted at all, and many administrators in the retail sales tax branch were even more surprised than we were. We were quite surprised by the response we received back when we asked the questions about how things would apply, and people would tell us, "Those are the same questions we're asking."

**Mr Stewart:** The Treasurer, to his credit, in discussions that we had after the fact agreed. We raised that very point. This issue and the warranty tax caught everybody by surprise. He was very frank about it and said, "Okay, we're going to have to work to make it a more open budget system and process." We were encouraged by that too.

**Mrs Caplan:** I've heard from numerous people about the devastating impact of the 8% tax on benefits. It's having an effect on the cost of doing business, on job creation. Also, workers are very worried about what's going to happen to their benefit plans. I appreciate your comments.

**Mr Stewart:** You mentioned, Norm, that you hear people who come in, and people have a definite view and a different slant on things. What we've tried to do is give a balanced assessment. We know there's a need for revenue to help pay that debt and deficit. What we want to get is a range of tax policies that aren't necessarily identical to any other jurisdictions, but when you look at the whole thing in the total context, they're competitive and they do the things they're meant to do.

If we want to have an environmental tax as an economic instrument, we want it to really benefit the environment and not simply be there as a thing that generates revenue. It doesn't really help the environment and in fact is a disincentive to buy our vehicles, because the best way to improve the environment is to get all the old vehicles off the road and replace them with all the new technology.

That's what we're trying to do, trying to think like a politician: How can we balance these things out? We know we just can't come in with a self-serving thing for you; we've got to come in with balance.

**Mr Jamison:** You've done that a lot at the dealership level, bringing older cars in. There's a certain period of time, if you bring them in, you get a—whatever—and it seems to work that way. You're able to invite certain people who may not be there normally at that time. It's an interesting point.

**Mr Turnbull:** On the subject of tax harmonization, if the federal government were to truly move away from taxing goods, as was the implied suggestion in the federal election, that we would move away from goods and services and have a broadly based sales tax, that could have potentially the effect of increasing the rate of tax. Thinking back to the old manufacturers' sales tax at 13.5%, what would be the impact on your industry if that were to be done?

**Mr Murray:** Maybe I'll get you to rephrase your question, because I don't think I fully understand it. Is your question looking at the federal government replacing the existing GST with a manufacturers' sales tax?

**Mr Turnbull:** I'm talking about if the province were to harmonize but, at the same time, what are you harmonizing with? Given the fact that the federal government is talking about getting rid of GST, and you know they have to raise as much tax, you're suggesting to the provincial government that it should harmonize.

**Mr Murray:** Our perspective is that the sales tax



should be as broadly based as possible so as not to favour one type of consumption over another type of consumption. The existing retail sales tax has been broadened in the last number of years to include a number of services, obviously, but it is still not a broad-based goods and services tax. We believe that consumption should be taxed at a uniform rate as much as is possible.

**Mr Turnbull:** So without getting hung up on the name of the tax, essentially you're saying that the provincial government should start to broaden out the tax base, should be taxing all services at the same rate as items which are sold.

**Mr Stewart:** If you harmonize with the current federal system even, that should allow them to broaden their base. They can derive even more revenue than they're making right now and it may allow them to lower the provincial sales tax rate and get as much or more revenue. So we say harmonization's good and administratively it makes sense too because it cuts through a whole need of a bureaucracy we're missing.

**Mr Turnbull:** You will recall of course that this was the intent of the federal government, that it wanted harmonization from day one and the provincial governments resisted because the essence of that was to use the existing provincial sales tax gathering system to gather that. So that basically would be your recommendation.

**Mr Stewart:** Certainly not go back to the old manufacturers' sales tax.

**Mrs Haslam:** Even if the GST is being touted as maybe coming off, would that still be your suggestion?

**Mr Murray:** I'll refocus what we would see to be the ideal sales tax, and obviously I'm speaking in the ideal world now. It would be a single sales tax that applies to a uniform base at a uniform rate across the country. Obviously there's a sharing mechanism that has to occur in some way, because in the province of Alberta I assume people would be quite upset with that; in the province of New Brunswick, where I grew up, which has an 11% sales tax, people might be quite happy with that. From our perspective that is the ideal.

Whether politically that can happen, we hope that it would happen. It becomes extremely difficult for a large manufacturing company which has operations in all provinces to deal with different rates in different provinces. The adoption of a sales tax that was called a harmonized sales tax in the province of Quebec has not been an easy transition; it is not a harmonized sales tax.

**Mr Jamison:** There was a better possibility of that.

**Mr Murray:** It was a missed opportunity, a lot of people feel.

**Mr Turnbull:** What are you doing about this potential of the federal government not allowing all payroll taxes to be fully deductible?

**Mr Murray:** Again it's a mixed question. From our perspective we don't like to see taxes on capital, we don't like to see taxes on payroll, we like to see taxes on profits, but we live in an environment where it is obvious that there will be some of these taxes.

Our perspective is that the two governments must get together so that they speak as a unified government at the end of the day so that one government doesn't go right and the other set of governments goes left. Whatever the system is, we'd like the governments to put that system together and agree with it. We may disagree with what the result is, but we are seeking a unified approach to taxation in this country.

**Mr Turnbull:** I completely agree with you. One of the problems is, as you correctly pointed out, that the different political regimes across the country are such that I don't think it can happen.

**The Chair:** I thank the Motor Vehicles Manufacturers' Association for making its presentation. I want to ask you something about vehicle title. If someone could just hang around afterwards, I'd love to talk to you about it. It won't get on Hansard, unfortunately, but we do thank you very much for your presentation this afternoon.

We stand adjourned until 2 pm Monday.

The committee adjourned at 1723.







## STANDING COMMITTEE ON FINANCE AND ECONOMIC AFFAIRS

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Fletcher, Derek (Guelph ND) for Mr Lessard

Morrow, Mark (Wentworth East/-Est ND) for Mr Wiseman

Rizzo, Tony (Oakwood ND) for Mr Sutherland

Turnbull, David (York Mills PC) for Mr Cousens

**Clerk pro tem / Greffière par intérim:** Bryce, Donna

**Staff / Personnel:** Campbell, Elaine, research officer, Legislative Research Service



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Monday 31 January 1994

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**Standing committee on  
finance and economic affairs**

**Comité permanent des finances  
et des affaires économiques**

Pre-budget consultations

Consultations prébudgétaires

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## STANDING COMMITTEE ON FINANCE AND ECONOMIC AFFAIRS

Monday 31 January 1994

The committee met at 1402 in the St Clair/Thames/Erie Rooms, Macdonald Block, Toronto.

## PRE-BUDGET CONSULTATIONS

## ONTARIO FEDERATION OF LABOUR

**The Chair (Mr Paul R. Johnson):** The committee will come to order. Our first presentation this afternoon is by the Ontario Federation of Labour. You may start.

**Mr Chris Schenk:** My name is Chris Schenk and I'm the research director for the Ontario Federation of Labour. Thank you for this opportunity to make our views known. I'm not going to try to speak on everything, nor am I going to try to read out everything I've written here. I have given a brief written submission, of which I'm sure I brought enough copies for you all.

While I haven't mapped out a blueprint for the Ontario economy and prosperity tomorrow, I have tried to limit myself to a few points which I think point in the directions we need to consider and indeed need to explore in a manner that I think can begin to help us in terms of our economic growth and employment situation.

I'd like to talk for a few minutes about a full employment strategy. I want to balance this with some discussion about the deficit issue, but I want to focus on a full employment strategy. I think this is a really important issue for all parties as well as the government, to map out or at least begin the process of mapping out a full employment strategy.

One of the big deficits we face today is not just monetary, but it's in our own lack of utilization of human capacity that exists already. With so many people unemployed, they are not able to contribute to our economy, so I think the focus of the budget needs to be on a full employment strategy. I think as well that it needs to set up some clear targets for job creation, as I try to point out in my written submission.

As well, it needs to have some clear targets in terms of reducing unemployment. A beginning would be to move it out of the double-digit figure in the upcoming year and to have clear targets for reduction in the years thereafter. This is all easier said than done, of course, but I think there are ways we can begin to do that. I think what we have a consensus on—I hope, at least—is that continuing double-digit unemployment is totally unacceptable to us as people in Ontario, and certainly to those of us in the labour movement who represent employees and try to help them maintain and improve their living standards and employment conditions.

What about the deficit and debt issue then? We always have this problem that we are at a provincial level and there are federal jurisdictions that are important to the economy. There are issues of deficit and debt at both levels of government, indeed all levels of government. I'm not going to try to sit here and argue that the deficit and debt aren't important issues. I think we all recognize they're important issues. The question is, how can we

deal with that important issue and have an economy which is growing and people employed?

I would like to suggest that debts and deficits are the consequence, in large part, of high unemployment and a sluggish economy, which have ramifications for government revenue. It's not just that debts and deficits have to be controlled and therefore we're going to have a certain amount of unemployment; it's that unemployment itself creates a revenue problem for government and we have difficulties with debts and deficits. I guess the other way of putting it is that a full employment economy, a growing economy, has a positive impact on revenue and has a positive impact on debt and deficit, at least as a percentage of gross domestic product.

The government has taken a number of initiatives in the area of employment creation as well as deficit and debt control. I'd just like to talk about a couple of them.

There is the new federal-provincial infrastructure program wherein Ontario, I believe, will receive about \$722 million in federal money, to be matched by provincial and municipal funds. This is a good example of government initiatives in terms of employment. There are a host of others, such as social housing in the public sector; there's the highway expansion, Highway 407; there's the convention centre expansion etc. There are many more, really. We've seen the sectoral partnership fund, the Jobs Ontario Community Action program etc, a range of good initiatives that the government has done in a period of fiscal restraint. We'd like to commend the government for those initiatives.

On the other hand, when I look at the Minister of Finance's statement before this committee, I see that those things are outlined, and then when we move to debt and deficit, we see that there's an expenditure control program and a social contract, but we don't see anything about the employment consequences of those programs.

We see initiatives on the one hand without much being said there in his statement about the cost effects on deficit and debt, and then we see other programs put in to control deficit and debt without the employment consequences laid out before us.

1410

I think that's a bit difficult, because on the face of it at least one could read the minister's statement and say, "Doesn't your activity on the expenditure control program and the social contract, which takes about \$6 billion out of this economy per year, not to mention the fact that it opens up legally negotiated collective agreements, have employment consequences which cancel out your employment initiatives?" such as the ones I've outlined.

One could argue that one needs to take limited funds and channel them in certain directions. There's absolutely no doubt about that. One can't continue always with the same kinds of programs that one has had, but I think the public sector cuts have an effect on economic recovery

and have employment consequences which need to be at least detailed.

I would like to present a few suggestions or perhaps limit myself to one suggestion which I take up in the written statement as to how to create more jobs.

In conditions of some fiscal limitations, one needs to look at a reduction in working time, and the Canadian Labour Congress has asked the federal government to establish a task force on this issue. I would hope that the standing committee might consider this as an issue of some priority, and if the federal government isn't prepared to move in this direction, perhaps the Ontario government could consider it.

By reduced working time, I'm talking about ways in which we could create more work, given the amount of work available. A relatively easy one to deal with, at least in a legislative sense it's easier, is to restrict overtime.

We have in this country a situation where we have workplaces of hundreds, indeed thousands of employees. In some cases, they've got hundreds and thousands on layoff and yet the people employed are working overtime. Many of my own constituency find this useful, to get some overtime in hard times, but the trade union movement didn't fight for time and a half for overtime or double time for overtime because it wanted its members to make more money. Initially, that was thought to be a penalty on the employers to make them hire someone else. For a range of reasons that isn't happening as much as it could, cost to the employer being one.

Why wouldn't I work you an extra two hours overtime, and three or four other people, rather than hire someone else, given my administrative costs, given my costs of just familiarizing them with the tasks etc? There are ways around this, which a number of countries have looked at, and I think in Ontario today it's very timely to consider how we reduce work time so that more people can get some employment.

At the same time, I recognize that the areas of growth in this economy are not only in workplaces of below 20 employees, primarily in the service sector, but it's also part-time work and contract work. I realize that while in some cases there are full-time people working overtime, there are also a lot of part-time people who want more full-time work. Nevertheless, I think there are ways to come to grips with this issue which can be beneficial to all concerned.

I don't know what my time is but I would like to mention the fair tax issue if I could. This is another area which I think we need to look at more thoroughly. The Fair Tax Commission has done a number of studies. It's done some exhaustive work in some areas, so exhaustive that I, for one, have not been able read everything it's produced, but I do see there a number of areas which I think the government could look at.

There is an issue of tax fairness in this country. There is a concern by a lot of people that they are taxed considerably and that other people are not taxed as much or have ways around that tax. Realizing the economy in which we compete, realizing there are other jurisdictions

we have to compete with, there are still ways to make taxes fairer and probably to increase revenue for the government at the same time, without making working and middle-class people pay more and more.

I have appended to the back of our submission some remarks we made to the Fair Tax Commission for your information.

Let me conclude by making four recommendations.

(1) The upcoming budget should establish a full employment strategy with clear targets for job creation as well for unemployment reduction.

(2) The government needs to provide accurate data on the employment impact of the expenditure control program and the social contract, not just the estimated expenditure reductions, so that a proper evaluation of the employment impact can be conducted and of course compared and contrasted with the employment initiatives that the government has made in a very positive manner.

(3) The government should lobby its federal counterpart to establish a task force on the reduction of working time. In the absence of a favourable response, it should establish an Ontario task force on this issue.

(4) The government should begin to implement key recommendations of the Fair Tax Commission—I didn't say implement all of them, but some of the key ones—with the knowledge that tax fairness will not only restore the integrity of the system, but by equitably taxing those who can most afford to pay, potentially expand tax revenue.

I'll end my presentation there. If your practice is to have questions, I am more than willing to entertain them.

**Mr Bruce Crozier (Essex South):** Thank you very much for your positive and constructive recommendations, particularly with regard to the federal-provincial task force. At the present time, you may be aware that the Liberal caucus is conducting a jobs task force in Ontario, to which we invite labour, business and those from the community with a vested interest—

**Mr Schenk:** I would be surprised if you didn't remind me of that.

**Mr Crozier:** —but there's one thing I wanted to clarify, and that is that you suggested the reduction in overtime be legislated.

**Mr Schenk:** I think there are some legislative things we can do on that issue.

**Mr Crozier:** With all due respect, I think we should be very careful before we enter that arena to legislate limiting overtime, because we are being told that the costs of doing business, and I mean government business or private business, are part of the reason we're in the economic and jobs situation we're in. We are being told by most who attend these that the less government does, the better. In other words, stay out of their face. I think we should be careful, particularly with legislating and limiting overtime, if that's what you meant.

**Mr Schenk:** Let me just make a couple of comments. In a number of countries in Europe, when I asked them about this issue, they told me that there were particular tax incentives, for example, for an employer to hire



someone else. For example, there is a certain administrative cost to any employer trying to hire you to do two or three hours' work instead of having me stay overtime. There are certain tax incentives that are given employers when they hire someone else. There is some streamlining of programs so that a person can go from unemployment insurance into doing some work for a few days and back without having a massive problem for that employee.

Then there are some things in the Employment Standards Act one could look at. I think 44 hours is the work week. In many countries they've reduced that to 40. There are minor things that could be done legislatively, but I don't think it's primarily a legislative issue.

**Mr Crozier:** That still doesn't limit the overtime. Forty-four hours may be the standard work week, but then you're paid for overtime.

**Mr Schenk:** Some of that has to be done in collective bargaining, but I'm trying to get at how you deal with the unorganized workforce here which won't get time and a half or anything. How can one make some restrictions in those areas? I haven't thought them all through yet, but it seems to me that if there are ways to restrict the overtime in a manner that doesn't penalize an employer cost-wise and at the same time would further other employment, that's the kind of thing we need to look at.

**Mr W. Donald Cousens (Markham):** I recently saw your survey of the job layoffs and the totals within the province. How many jobs do you think have been lost in the province among the whole public service, or do you have any sense of how many jobs have disappeared, since the social contract and the expenditure control plan? It's a playful question. I'll tell you why I'm asking it. I'm not trying to put you in a position otherwise.

**Mr Schenk:** No problem.

**Mr Cousens:** When we had the Minister of Finance in here a couple of weeks ago, I asked the same question. His public servants got to their books and they said, "Oh, it's 82," and I just find that a little bit hard to believe. Do you have a sense that it's been worse than that in the province, more than that or whatever?

**Mr Schenk:** As you probably know, if an employee for the government here gets—

**Mr Cousens:** I mean, the whole province, with hospitals and municipalities, is 900,000 people, and only 82.

**Mr Schenk:** I have difficulty having any confidence in that figure. If you make a direct government employee surplus, they still have six months. What you will find there is that a whole range of them are able to find other jobs, and then there is a range of them still on that surplus list who will be going out the door.

**Mr Cousens:** Do you have any idea of the numbers?

**Mr Schenk:** I don't have.

**Mr Cousens:** Could you get them? Is it something you'd be close to with your friends?

**Mr Schenk:** I certainly hope to get them.

**Mr Cousens:** I'd love to see them.

**Mr Schenk:** There are other issues. There are other

people who are part-time people who are on these lists.

**Mr Cousens:** Oh, I know. There's part-time and then there's retirement—

**Mr Schenk:** There's contract.

**Mr Cousens:** —and then there are buyouts.

**Mr Schenk:** Right. It becomes a little complicated. The reason I put it in there is I don't have them and I'd like to have them.

**Mr Cousens:** I'm looking for them. We're starting to get our own list.

When you talk about the deficit, that's one of the areas where you and I might have a different position, but the government's talking about a \$10-billion deficit this year. It might even be higher. In fact, I'm pretty sure it is. What would be your magic number for a deficit for Ontario in these economic times?

**Mr Schenk:** That gets into a longer discussion on the role of a deficit and what the additional moneys the government needs are being used for.

**Mr Cousens:** I understand that.

**Mr Schenk:** Because part of that is for investment in various economic activities and various social programs etc, so there's a whole range of questions there.

**Mr Cousens:** But do you have a number?

**Mr Schenk:** I do not have a magic number. There have been deficits in this country much higher than this and I think to good effect. I am not particularly frightened by having a deficit. This has become a big issue as monetarist economic theory has taken some precedence over Keynesian economic theory. I don't have a big problem with a deficit of \$10 billion or \$12 billion or \$14 billion depending (a) on what it's used for and (b) where it is being borrowed from.

A major problem I have with this deficit is not the amount, not the magic figure, but where are we getting the money? We're getting it from outside of this country, and that is a problem. It's very different when you owe it to financial institutions in New York as opposed to the Canadian public or the Ontario public.

In other words, if it was Ontario savings bonds or economic recovery bonds, or even a good part of it was that, that's very different because any government, whether it's led by you or the New Democratic Party, is able to finance that. You can pay it back, but you can also just float another bond. That's a very different animal than when you owe a certain amount of money to a financial institution which demands payment. It's very different if money is going out of the country than if it's staying in the country. Those issues, to me, are as important, if not more important than the actual amount.

**Mr Cousens:** I'm glad you say that, because there's no easy answer to it. The one thing is that there's only one taxpayer, and we're reaching a point where if you don't pay the taxes today, by having a deficit it's a deferred tax on future generations. It's another way of passing off responsibility in our time today to future generations and future taxpayers. Getting back to the size of the deficit, to me the \$10-billion number is still too large and too difficult to deal with.

Somehow or other, when I listen to you, I agree with some of your fundamental principles. Somewhere along the way, we've got to find a way of establishing a dialogue where we can deal with the reality of it. I want to see more jobs. I want to see a better future. I want to see a lot of the things you're asking for. Somehow or other, we've got to find a way together to work out a method to get there. I appreciate the difficulty of it.

**Mr Kimble Sutherland (Oxford):** I certainly hope this committee, when it returns, will take up the issue of not only shorter workweeks, but the whole concept of workweeks in general, how much overtime is going on right now, how we get shorter workweeks, and examine some of the things that are going on in the private sector, what Bell has done for a short-term workweek. That would be an ideal topic for this committee to examine.

We've heard testimony from many people, certainly different forms of business groups, who indicate that payroll taxes, in many senses, are a disincentive for hiring more employees. If we're looking at how we can hire more people, they suggest specifically that you should go away from payroll taxes to, I guess for lack of a better term, more progressive corporate taxation rather than on hiring an employee and paying tax according to what they earn, not only those that are payroll taxes, but the other costs to business that are based on payroll, whether that be WCB or other things.

Have you or the OFL had any comment on that, as to how the government may be able to redirect or focus its taxation policy in that way that would help the employment situation, hire more people but still be able to maintain the tax levels we need for services?

**Mr Schenk:** We certainly have advocated a progressive taxation system and moves away from consumer-type taxes, which I find particularly regressive, like the GST, to more progressive forms of taxation. On the other hand, there is a tax mix and we find in our tax mix that it's often useful to use various kinds of taxes.

Payroll taxes have a role to play. I'm certainly not advocating that we have more of them or that we increase them, but if you look at some of them—you mentioned workers' compensation. There's a certain sawoff in terms of what workers' compensation does versus particular legal suits in the American system. I happen to think our workers' compensation system, not touching on the current controversies around it but by and large, as an approach, is a valuable one.

That involves what employers would call a payroll tax. I think that's a legitimate tradeoff. Most countries have various kinds of payroll taxes, including some for training and other things that we don't have at this point. I would just leave it there without getting into it any more.

**Mr Norm Jamison (Norfolk):** You talked about how you felt about the social contract. I think it's understandable. We understand that's a measure that wasn't well received in certain quarters. I have to say that comparing that to Ralph Klein's moves, for example, in Alberta, at least, we believe there were up to 40,000 jobs maintained through that measure. Maintaining jobs is important.

The question I want really to get to beyond that is the

reduced workweek, the reduced amount of payment for overtime. It's been my experience through negotiations that you really don't become effective in promoting the hiring of people until overtime is more expensive than the general wage and benefit package itself. You say that government can introduce measures to enhance that situation for an employer to hire people. I believe we are in some ways, through Jobs Ontario, through the \$10,000 tax credit for hiring. What kind of measures, in your mind, would have to take place to promote the employing of people rather than as some—not all, but some—companies do by the overextension of overtime hours within a facility?

**Mr Schenk:** The methods I'm most familiar with now are those used in collective bargaining situations. If we look at the latest agreements at Chrysler and the rest of the auto industry, you will see that they put some considerable restrictions on overtime and won their bargaining teams and workforce to those ideas. I think at Chrysler it's 1,000 new jobs basically created by restricting overtime. Those kinds of mechanisms can be done, and that partly is our responsibility on the labour side.

I was thinking that what we need to do is strike a task force or some kind of vehicle to examine the various ways this is done in other jurisdictions. Even government initiatives can be taken to help us spread what work there is available around to more people. I don't have all the solutions, but certainly one of them would be looking at the kinds of costs there are for employers today in hiring a new person versus working someone overtime and the cost to an employee who's, say, on social assistance or unemployment insurance for taking two days' work and then going back on to some form of assistance. That's about as far as I've taken it at this point, but I think those are the kinds of things that need to be looked at.

You mentioned the Jobs Ontario \$10,000. I think that has some positive aspects. There are some difficulties with that kind of program, and I haven't seen the latest stats at this point. I understand there are more people utilizing it, but I don't think it's taken up quite the way people had expected, nor have the day care spots been filled, which were fairly generous, in the program. I don't think they've been utilized for a number of reasons.

Partly it shows the difficulty of trying to create employment, and for many employers \$10,000 isn't enough to make them hire in a period of recession. There are some things you just can't deal with from a government point of view very directly, but that certainly is one way of trying to further employment.

The social contract thing gets us into another issue. Was the projected deficit of \$17 billion really a very realistic projection or was it a worst-case scenario? There is a whole range of issues there.

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And then there's the role of deficit. The highest deficits ever in this country were in the Second World War, a very different period, but they were the highest deficits, way higher than we have now. We have, I think, around \$500 billion federally. It was about \$1,200 billion federally in today's figures, the federal government deficit. Did that lead to economic disaster? Quite the



contrary, it pumped so much money into the system. This is a system which is producing for a war and it's going to have to produce and produce. I wouldn't equate the situations but it was one major factor in leading to economic prosperity by putting money into a system, and giving our children what? Did it give them a tremendous debt to pay back or did it bring them a better education system, better training, better medicare etc?

I think it can be argued that deficit spending can be phenomenally useful in funding employment, in stimulating an economy where its GDP grows again and its deficit begins to shrink comparatively. One has to look at this situation we find ourselves in, which is not one that's equatable with that.

I'm not arguing that tomorrow we should go out and spend another \$500 billion, but I think the focus on the deficit has been an incorrect one. I think the focus has to be on how we move this economy forward to GDP growth and to employment growth, and within the context of a full employment strategy, what is the role of the deficit? Is it just wasted money going down the tube that we can't afford to spend? It is being used for investments that will propel this economy forward? Where are we getting this money from and how are we going to pay it back? If we're borrowing it all from New York, we're going to be in big trouble, in my view, in terms of paying it back.

I know that's the easy place to borrow it from. They can do the job. We're talking about approximately \$1 billion a month at this point in time for the provincial government, and you're not going to find \$1 billion a month just sitting there on Bay Street waiting for you, but I think there are ways to raise a considerable percentage of that right here, which has real repercussions in terms of paying it back.

**The Chair:** Thank you, Mr Schenk. I thank the Ontario Federation of Labour for making its presentation.

#### CANADIAN FEDERATION OF INDEPENDENT BUSINESS

**The Chair:** The next presentation is by the Canadian Federation of Independent Business. The representatives are familiar to most of the members of this committee, but please identify yourselves for the purposes of Hansard and for the committee members.

**Ms Judith Andrew:** I'm Judith Andrew, the director of provincial policy for the Canadian Federation of Independent Business. We appreciate the opportunity to appear before your committee today, and I'd like to briefly introduce our delegation. CFIB's president is John Bulloch and Catherine Swift is vice-president. Mr William Gazer is from William Gazer Insurance Brokers Ltd, and Mr Alan Ely is from Ely Ltd, men's clothiers in Toronto. We are grateful to our members for joining our presentation. John will begin.

**Mr John Bulloch:** I'd like to make just a few comments that you might find useful. They're based on over 25 years of experience with tax reform exercises in this country, going back even as far as the Carter royal commission in 1966. I have personally been, and our organization has been, very much involved in about every

permutation and combination of consultation, manipulation and public opposition on matters relating to tax.

There are a few important lessons that need to be learned by all of us, because we seem to go around this circle every three or four years. The first lesson to be learned is that there's absolutely nothing new in tax, and the Fair Tax Commission report was totally predictable, once you know who the players are.

The section on taxation of dividends, capital gains and wealth taxes came right out of the 1969 white paper on tax reform, the section on sales tax reform came right out of the 1987 federal paper on sales tax reform, and both were written by the same person. The stuff on personal income tax came out of a 1991 discussion paper.

Lesson 2: Don't mix tax reform and revenue raising. If particular tax measures are no longer necessary or effective, remove them and drop the rates. That was why the 1987 income tax reform exercise was so successful and massive changes were made in the Canadian tax system. If new revenues are needed, and we don't agree that they are, but if they're needed, you raise rates. Don't get involved in sneaky exercises that have turned the words "tax reform" into code words for revenue raising.

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What governments do with reports is that they cherry-pick them for their own purposes. That's what Edgar Benson did in 1970. He cherry-picked the Carter royal commission report. We believe that's the danger we face with the Fair Tax Commission report, that it will be cherry-picked for the government's own purposes.

At the present time, the federal government and the Ontario government are negotiating to replace the present personal income tax system, which is applied tax on tax, and have it applied directly on the personal income tax base. This is going on at the present time, but it's got nothing to do with reform of municipal taxation. What they're doing is trying to negotiate a way to fund the expected cuts in transfers by taxing the taxpayers more extensively.

What we're very afraid of, as an organization, and what Canadians should be worried about, is that this new federal-provincial fiscal kissy-face is really being done at the expense of the taxpayers rather than for the taxpayers. Tax base broadening, a new federal-provincial fiscal agreement on PIT, and sales tax reform are potentially some of the biggest provincial tax grabs in Canadian history.

Rule 3: Expenditure cutting is the key to tax reform. We have tax measures in the tax system to encourage savings and investment, because governments take 80% of all our savings. If you didn't have those measures, they'd take 100% of all savings, and they'd still have to borrow tens of billions of dollars a year offshore.

I agree the tax system is unfair, but you don't have the power to change it. It's unfair to the middle class because wealthy Canadians have all their money in foreign trusts and you can't get your hands on it. The major corporations have their own underground economy—it's called the global economy—and you can't get at them either.

What's happening in the western democracies is that



the burden of tax is falling on labour in the form of payroll taxes, which corporations pay and individuals pay, and on consumption taxes. It's falling on the domestic economy, and that's why you've got this jobless recovery phenomenon in the western world.

Rule 4: Modify and strengthen or change the tax system in small chunks. Tax professionals play a game of "Gotcha" with federal bureaucrats. No sooner do they devise a measure than a small handful play the game of trying to beat it and flogging their changes for their own purposes. When you revise the tax system, a problem in one area has myriad interconnections with other sections, so it has to be done very carefully. If you politicize it, you'll have a mess. These are highly technical problems. We have worked cooperatively with nine out of 11 Finance ministers to clean up the tax system.

The fifth and final point, and I don't want to take too much time, is do not confuse general tax issues with the issue of small business financing and the tax system. It's a separate body of knowledge. There are five totally distinct strata within the small business community that have their own financial problems. You can't deal with their problems through programs. All the programs in Canada combined never touch more than 5% of all the small businesses in Canada.

Capital markets are biased against small business. The tax system is biased against small business. So is the regulatory system. You try to offset these biases through the tax system because there isn't a program approach. You cannot finance the equity needs of small business through institutions. It's a non-institutional equity market that serves small business. Your low corporate rate up front and back-end incentives are all designed to move money from individuals into small business.

Another thing that's very mischievous is when reports pick out one tax and compare it with big business or compare it with the Americans. We have done extensive research—the studies are in our submission—that show that the effective tax rate for small and medium-sized corporations in Canada are higher than the effective tax rates paid by big business and higher than the effective tax rates paid by their counterparts south of the border.

That's all I want to say and I'll be available for questions if you want to follow up on what I've said.

**Ms Catherine Swift:** First of all, we found that attempting to jam both the Fair Tax Commission report and the pre-budget for 1994 into about 15 minutes so that we allow some time for your questions is absolute craziness, and we sure hope there will be other opportunities to discuss many of these very substantive issues.

John's just given an overview of our approach to the Fair Tax commission situation. I'd like to move into related but really more budgetary matters.

We all know that Ontarians have seen over a decade now of very substantive tax increases, as Canadians have generally, and in the context of both the upcoming budget and any further deliberations on the Fair Tax Commission report, one bottom line is that there simply is no revenue solution to our current problems. As we've seen in a number of provinces, notably down east and on the

Prairies, tax increases these days translate into even angrier taxpayers and growth in the underground economy. They do not translate into revenue increases for government. In fact, they translate into revenue decreases in some instances. As to the notion that there's tax room, even if one philosophically would like to believe it, you're not going to get more money out of it.

The only real solution for any kind of sustained answer to our difficulties has to be on the expenditure side, and when we look at what's going on around the country, certainly comparing the public to the private sector, the whole social contract situation, if the savings are realized—which remains a big if, but we'll see that down the road—even if those savings are realized, they can only be viewed as a bare beginning to the kind of efficiency-enhancing expenditure reduction in the province of Ontario.

We see a model happening in Alberta, interestingly enough, with fairly substantive cuts being made, cuts that nobody particularly likes to see, but we would predict at this time that it will forestall the need for more drastic cuts in the future. Also, interestingly enough, Ralph Klein is getting quite a lot of support for what he's doing, so perhaps it puts the lie to the notion that people will never go along with these kinds of cuts. What it does take, however, is some political intestinal fortitude, which we haven't seen in a lot of jurisdictions as yet.

We have a lot of specific suggestions, and given the shortness of time we've highlighted them in the document we handed out today, so I'm not going to go through them here, just talk in generalities for the moment.

What we also find worrisome in Ontario is the increasing attention paid to the so-called non-tax revenue items. We feel a number of principles have to be kept in mind when looking at these items.

First of all, if these measures are contemplated, and there may be places where they are appropriate, they should be considered as a replacement for taxes, not simply an incremental means of obtaining more revenue for government. They should also be guided by principles of user pay. Our members are very supportive of user pay. It's a sensible way to approach things. But you must keep in mind also that a service should be provided. We find a number of examples in Ontario: The \$50 corporate filing fee is a good example which has just outraged small businesses because there is virtually no service provided for this so-called fee. There are users, however, of this database who could be charged, and that seems to be a more sensible way to go than to ding everyone.

Finally, I heard the earlier person from the OFL mentioning, or someone asking, how high a deficit is good, which is almost oxymoronic in any economist's language. In any event, I find the fact that we in Ontario have found achieving a \$10-billion deficit a major accomplishment incredibly dubious. We should be ashamed and disgraced by the level of our deficit. We not only need to keep it within \$10 billion—three years ago, we would have thought people were dreaming in Technicolor if they put that number forward—we really need to get it down an awful lot lower, and the only good deficit, of course, is a zero deficit.



**Ms Andrew:** At this point, I'd like to let you know that we have in our brief a thoroughgoing section on payroll taxes which outlines the research that shows that small businesses are more labour-intensive than large businesses, and due to this fact, that makes payroll taxes highly regressive on small firms.

Within Canada, the analysis by size of firm reveals that the total tax burden is heaviest on small businesses as opposed to their larger counterparts. When we've analysed this matter with relation to outside of Canada, we see that Ontario's tax burden is uncompetitively high and that large components of that tax burden are profit-insensitive and therefore are particularly damaging to the small business job creators in this province. Those portions that are profit-insensitive of course are the payroll taxes and local taxes that small businesses bear.

Our overall conclusion from this analysis is that Ontario must find ways to reduce the regressive payroll tax burden on the small business job creators in the province, and we have two concrete recommendations in this regard.

The first one is that the government must focus on reform of the Workers' Compensation Board, which levies very high payroll taxes on businesses and which interestingly was not considered part of the Fair Tax Commission's study. Our second recommendation is that Ontario should replace the graduated employer health tax rate structure with a small business allowance set at the level of \$400,000 of payroll. That would indeed relieve the burden and be fair to businesses across the board.

I'd like to touch on another area, found near the back of the brief, and that is unfair competition. Our provincial survey results over the last couple of years have shown very high levels of concern with unfair competition. Up to 25% of our members complain about this.

The categories of unfair competition include grants, loans and government programs which subsidize commercial operations with taxpayers' dollars; commercial activity by tax-exempt, non-profit firms; commercial activity by government agencies; and finally, entry into the small business competitive markets by regulated utilities or regulated monopolies. We have listed numerous examples of actual complaints we have received from members about this on page 41 of our brief.

Our overall recommendation in this area is that government must take immediate steps to curtail the various types of destructive competition that are currently plaguing small business in the province. Specifically, we recommend eliminating administered subsidy programs to business, we recommend banning competition by government and its agencies, and we recommend ensuring that non-profits do not enjoy tax-free status on any commercial portion of their operations.

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**Mr Alan Ely:** I'm here to present a very brief tale of an independent merchant who at this stage in the game is a survivor. Some of the things I have to say will bear some relevance for you; some may cause questions.

My 92-year-old company at this stage in the game so far is a survivor through the current cycle of the economy

because we've done two things: We've downsized or rightsized our company to make it work, and we've undertaken some creative negotiating with both our landlords and our staff to make sure the costs of running our business are appropriate to the amount of business we're capable of doing in today's environment. In that current situation, I can just pay the tax burden my company fields at this stage in the game, something in the order of 14% to 15% of my gross revenue.

If the business community continues to experience the modest uptake in business that seems to be occurring today, I'll continue to be able to survive, but I won't be able to pay any more taxes. There's no more there. There's nothing more in my business to be squeezed out of it. In fact, if I'm going to grow back to a larger company, which we have been in the past, and maybe larger still, I've got to develop some kind of bottom line for my company out of which to fund that growth. That doesn't happen if the more I make, the more it filters out through the back door.

I'd sit and I'd look at my business and your business and hope that in some measure they're the same, and the common law in my business says I can't spend more than I take in, not for long anyhow, and not without some very careful negotiations that will allow me to finance that load for a while. But if I do it for long, sooner or later my banker—as he did; he came to me two and a half years ago—will call my loan.

I guess I'm concerned that he'll call ours. I don't know how we contend with that. That's all I have.

**Mr William Gazer:** Thank you for the opportunity to be here today, ladies and gentlemen.

CPP, UIC, EHT: a volatile equation, a poisonous cocktail. We, as insurance brokers in the province, have been labouring under increased taxes on automobile and property insurance and a new automobile insurance bill. The police will tell you that so many people who are drivers and consumers of insurance in Ontario are dumping their insurance that a full 15% of the people they stop and check on their automobile computers are no longer driving with insurance. It's a non-affordable commodity.

With respect to what happens if EHT, UIC or CPP increase any longer, I cannot hesitate to pare down the job times of my employees, to seriously consider laying off permanently people who have been long-time, loyal, well-trained and experienced. I would not feel any compunction that the name of the game is survival today and that the decisions have to be made at the top. As a role model I have none other than Premier Rae's friend Maurice Strong, the Juan Peron of the north, who seems to be committed to survival of Ontario Hydro.

The next bit of evidence I'd like to present as testimony would be purely anecdotal. Some of it is known to me and it's interesting to note. In the US jurisdictions of Tennessee, North Carolina, South Carolina and Georgia, a salubrious and somewhat symbiotic relationship has taken place between two very important elements: business and labour. Some 14 to 16 months ago in these jurisdictions there was 7.5% to 8% unemployment. It has fallen now to approximately 4%, the implication being



that in these jurisdictions job growth is being presented somewhat at the expense of Ontario. I know two businesses that have left Ontario, not to return, in the last 12 months, and one client of mine who anticipates leaving the province in the next six because of the tax burden.

**Ms Andrew:** That completes the formal part of our presentation. We would be pleased to answer your questions.

**Mr Cousens:** The first thing I want to do is go on record, Mr Bulloch, and say a very sincere thank you from my caucus, and my colleague Mr Carr in particular, for the ongoing support, excellent research and data that you were able to collect for all legislators on matters pertaining to government affairs. I thank Judith Andrew and Catherine Swift for the support they give in that direction. I see it as unbiased. I see it as clean. I see it as the kind of thing that I like to refer to and I'm glad to refer to. I put that on the record.

I want to clear up the record on one other thing, and that is deficits. When I was asking the question on deficits, I don't like a deficit either. I was trying to find out if the previous speakers had a number they liked, and I didn't find it. My number is zero, if we can ever get there, and to move so as much as possible.

Small business: I'm going to refer back to your report. Is there any other comment? Your last two speakers had good things to say about business in general, but small business? I'd like to see a section in our report on how this province could help small business.

**Mr Bulloch:** Let me try to give you a sense of what's going on out there. Margins are being squeezed right across the province. They're being squeezed on the revenue side by a very competitive environment, by a very cautious, squinty-eyed consumer, and they're being squeezed on the expenditure side by the growth of taxation, payroll and property tax, of course, which have their own regressive effects. To survive, businesses are restructuring dramatically. Dramatic subcontracting is taking place and a dramatic conversion of regular jobs into part-time jobs and into self-employed subcontractors, massive in their implication.

Your data on unemployment and even small business statistics are grossly misleading. You can have a rapidly growing firm of eight employees, and they're all growing in terms of additional subcontractors and it doesn't show up in the statistics. A lot of this subcontracting is being driven by technology, but it's also being driven by the insatiable cost of government, which shows up in the form of property and payroll taxes.

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We have something like a million self-employed today. Half of them are in homes. The movement from streets back into the home, to get away from the property tax burden, is taking place. The move to subcontracting part-time is being driven by the payroll tax.

These moves that governments make have fairly dramatic ramifications. There is a sense out there that you have to be a bit of an economic guerrilla to survive because you've got to fight banks and fight governments and you don't seem to have too many friends.

What we need out there is a sense that government is not the enemy. We have to have a change in mood in this country so that they'll start to feel positive about the future. Everything they're doing now is survival-oriented, and nobody's talking about the future because they're all so fearful about the next round of taxes and the threat it represents to the demand from their customers and their own operations.

**Ms Swift:** To continue briefly from that, the other thing to keep in mind is that carrots work a lot better than sticks. It was interesting to hear the labour gentleman speak before us because he said, "Businesses aren't hiring enough people so we've got to force them to have to charge more for overtime," or: "Let's hit them with a few more sticks here. This is the answer."

The reason they're hiring people on overtime, as we all well know, is that it costs a fortune to hire a new person. Then say demand isn't there six months from now; it costs you a fortune if you want to get rid of the person again. We have such inflexible regulations, benefits that have to be provided, the whole shebang.

If we had a few carrots dangling in front of people instead of continually hitting them with sticks, they'd hire some more people and might stay in the province.

**Ms Andrew:** Right now in this province the cost of government-mandated benefits and programs on a new hire is over 20%, and that's before a firm offers any type of benefit package to that individual. So right away, you've got to pay 120% of the salary in order to bring on a new person.

**Mr Sutherland:** You mentioned a couple of things. You asked why WCB wasn't in the Fair Tax Commission. I assume it's because while it's a cost of business, it's not a tax; it's a premium in exchange for workers not having the right to sue for difficulties.

I want to pick up on the question about deficits. We've heard a lot of different advice here. There seems to be, though, a growing consensus that deficits need to be dealt with, but in terms of how you deal with them, you should be careful that you don't take too dramatic a approach or you'll have a negative impact on the economic recovery.

I'm just wondering whether the CFIB has any opinion as to whether it supports, for lack of a better term, what the third party has been supporting, a Reform-style approach, doing it very dramatically, very quickly, or whether you would suggest that we do it in a more gradual approach so we don't harm economic recovery. What's your sense of that?

**Mr Bulloch:** Let me just state that we put out a major position paper on the deficit at the end of last year and have distributed it to 100,000 companies. It was our view, and it hasn't changed, that the portion of the deficit that won't go away if we get renewed economic growth is in the order of \$8 billion to \$12 billion at the provincial level, and about \$8 billion to \$12 billion at the federal level. We suggested that this be done appropriately through expenditure cutting rather than tax increases simply because the governments in this country have lost control of the revenue side of the deficit equation.

They can't forecast anything today because so much of



the economy is underground and people are so defensive. So many taxes they thought were domestic are turning out to be quite mobile. Consumption is becoming very mobile as people find ways of beating the tax system.

The reason almost every government in Canada has problems with its deficit numbers is because it's lost the revenue side of the equation—this is more than just philosophy; this is a very pragmatic issue—that the solution is revenue raising. Whether you do it all in one crack, that's usually taken out of our hands. Governments will do their nasties in their first year in office, and it doesn't matter what party's in power, and so the timing of these things is usually a political issue. We expect the federal government to be quite vicious and nasty in its first year, less vicious the second year, and kissing and loving all of us in the third and fourth year. All governments seem to do it that way. But one way or the other, we're going to have to take \$20 billion out of our spending stream in this country to prevent what might hit us in about two to three years.

The potential for a debt crisis is sitting out there and it's going to hit the provinces and municipalities because almost all the foreign debt is provincial; say, 80% of the foreign debt is provincial-municipal. The danger is that we could have a couple of provinces in this country that could disappear. The federal government has to deal with it at its level because it has first claim on the savings. When they take all the savings, Ontario's debt then goes offshore and a lot of big corporate debt goes offshore, and we are in the mess we're into now.

This is not a partisan issue any more. When you're at this level of crisis, it's not partisan. The nasty stuff that was done by the government of New Zealand was done by an NDP-style, social democratic government.

**Ms Andrew:** Just a word on the WCB not being a tax: In our members' view, it is very much a payroll tax. It is a mandatory system. It's been in place since the early 1900s. People are required to remit their premiums, and when it's government-mandated to the tune of \$3 billion a year, we consider that a tax, as do our members.

**Mr Sutherland:** You would prefer then to go back to giving people the right to sue?

**Ms Andrew:** In this brief, we didn't get into our ideas on reform but I can certainly provide those separately. We have many ideas on WCB reform. But we would say that the Fair Tax Commission missed a big tax when it did not study the WCB.

**Ms Swift:** The whole problem, when you get back to the deficit issue, whether it's with the WCB or with governments generally, as long as the tax route available to the government—whatever political stripe; it seems to be irrelevant over the years—they will not reform spending. It's the easiest copout route. As long as you can increase WCB premiums, UI premiums, and taxes etc, then you will not do the structural change.

Companies didn't want to downsize. They had to. It was death or downsize. It's the same with governments. You will not downsize until you're forced to. Right now, we have a silent tax revolt going on with the underground economy and cross-border shopping. We saw a rather

open tax revolt in Quebec last week regarding cigarettes and so on. There will be more of those. The options unfortunately may be right out of your hands in terms of gradual versus more abrupt dealing with the deficit.

**Mrs Elinor Caplan (Orlione):** We only have a couple of minutes and there are many questions I'd like to explore with you. I was struck by the theme of mood and confidence. The importance of the small business sector in the province I don't think can be overstated in any way. I know that's the place where we see most job creation, and therefore the confidence of the small business community is extremely important. Your presence here today is very helpful to the committee.

I have a question about a graph you have on page 26 that shows the differing commercial and industrial effective tax rates within the province. It was a surprise to me to see the huge variations. I wondered whether this was because of the way we fund education, or does this have to do with our assessment base or is it just the decisions that are made at local councils? Is there any way you can explain these wide variations of tax rates in municipalities across the province?

**Ms Andrew:** It's probably part of all three of those. Certainly, the local decisions are made and the mandated differential is 15%, but many areas exceed that. This is something that wasn't brought out very well in the Fair Tax Commission report, but obviously a highlight for us is in terms of the much larger burden of the local tax that is by business, as opposed to the residential taxpayer.

**Mrs Caplan:** I was looking, for example, not only in the Metro area, the differential between, say, Mississauga, North York and Toronto, but also the differential between Owen Sound and Timmins, huge differences in communities that are neighbours, next door. I just wondered whether you had done any analysis on how this resulted, on what the factors were that created this. I think this has a lot to say about what's happening in the province and the need for change and reform, and if you're going to support small business, how the province does that in a place which is so widely different in each municipality.

**Ms Andrew:** We do note here in the report that there doesn't seem to be any attempt by municipalities to compete with each other, at least on the business side of things. This particular chart is basically a restatement of something that was in the Fair Tax Commission report, so it's got to be accurate.

Essentially, municipalities don't seem to care too much about business taxpayers. When we witnessed what happened in terms of the discussion of tax reform on market value assessment in Metro, the brunt of those proposals was to load even more on business and save the residential taxpayer. This is a very regressive tax on business that no one seems to want to highlight, and we chose to highlight it.

1510

**Mrs Caplan:** I appreciate your doing that; your inclusion of that graph and the discussion around those kinds of taxes.

You also mention the cost of each employee. We know the overwhelming job creation opportunity is in the small



business sector in Ontario, and I wondered, since it wasn't mentioned in your document here, what you have heard from your membership about the tax on benefits. In the last provincial budget, as you know, there was a new tax on benefits which is ultimately having two effects: One is either seeing the cancellation or reduction of benefits, or increasing the cost to employees. I wondered whether you have had any feedback from your members on the impact of that new tax.

**Ms Andrew:** We have had a fair bit of feedback from our members on that particular tax as well as the myriad other taxes introduced in that budget. When you tax benefits for a new firm that wishes to begin to introduce a package of benefits for employees, it makes it that much more difficult to do so, so we would certainly argue that the tax on benefits has discouraged smaller firms that didn't have benefits packages from actually introducing them.

You may want to explore this with the insurers, but my discussions with them tell me that the insurance companies are noting that many of their customers are either downgrading their packages or, essentially, companies are looking for ways to cut. This in effect is equivalent to a 1% payroll tax on benefits, if you calculate it on the average. For companies that determine they're going to keep their benefits packages as they stand, essentially it's another profit-insensitive tax that hits them.

**The Chair:** I thank the federation for its presentation.

BOARD OF TRADE  
OF METROPOLITAN TORONTO

**Mr Steve Lowden:** I'm Steve Lowden, vice-president of the Board of Trade of Metropolitan Toronto. I have with me Don McIver, who is chair of our economic policy committee and chief economist at Sun Life, and Maralynne Monteith, who is chair of our taxation committee and a partner at Morris Rose Ledgett.

Thank you for providing us with this opportunity. We've asked to appear at this late date in your hearing process because we've been examining the report of the Fair Tax Commission through a task force of the board. That task force consists of seven policy committees and we've needed this much time to get our preliminary thoughts together.

First, let me say that with so many other government initiatives, the Fair Tax Commission has cost us a lot of time and money and yet only a couple of weeks are allocated for public comment on the findings. I think this is inadequate and I'm sure you agree.

What you have before you today is not a formal policy submission. It's a minor variation of a presentation that we made to our council on January 20. It's comprised of a brief summary of the report followed by preliminary views on the concept of provincial assumption of responsibility for public education finance and some other key recommendations which we either support or do not support. All of it is accompanied by a package of charts which supports the positions we are taking. We hope to have all of this in the form of a formal submission by the time we meet the Minister of Finance on February 16 at his pre-budget consultation meeting concerning the Fair

Tax Commission report. We are not going to rail at you today about the overriding need for control in government and the need to get taxes down. We'll leave that to the pre-budget submission. The last deputation you heard dealt with it at length. But it does strike us that there can be no concept of fair tax allocation if there isn't a fair tax burden to begin with, so someone has got to deal with the quantum of taxes. The Fair Tax Commission chose to define that out of its objective and just deal with the allocation of the existing burden, but that will not solve the problem. Let me get on, then, to what we have come to talk about.

Firstly, we strongly support the concept of provincial finance of public education, although with a number of important caveats. Don McIver is going to speak about those in a minute.

Secondly, we see a tremendous opportunity being presented to finally introduce a fair, equitable and up-to-date property assessment system in Ontario by the province's taking over public education finance, one that will create a more level playing field for business across the province.

Thirdly, we completely reject the idea of raising personal income taxes as a means of generating revenue for provincial finance of public education. We have a raft of reasons for believing that this is a terrible idea. Instead, we believe the consumption taxes should be the basis for the takeover.

To be sure, there are plenty of ambiguities in the report of the Fair Tax Commission and plenty of recommendations that we emphatically reject, but, as Don and Maralynne will shortly explain, there are a number of positive recommendations which we believe we can recommend to each of you in the hope that, whoever forms the next government, serious consideration will be given to implementing them.

I'm first going to call on Don to comment on the pros and cons of provincial finance of public education. Maralynne will then present the balance of the presentation, which touches on property tax reform and the concerns we have about raising income taxes.

If there's sufficient time at the end of their presentation, I'd like to go through those charts with you, either on the overhead or we can just leaf through them, the ones at the back of our report, so we can quickly summarize our presentation in a more graphic way using the charts appended.

If there isn't, I'd just like to leave you with two thoughts relating to those charts. Consider that businesses in Ontario pay more in property taxes than they do in provincial corporate income tax, employer health tax or workers' compensation premiums and that the businesses in Ontario carry a vastly higher share of the total property tax burden than do businesses in the US. In Ontario it's 47% of the tax burden versus 16% in the US. It's a huge burden and one which we believe plays a more important role in what's been happening to our industrial base in recent years than is generally recognized.

1520

**Mr Donald McIver:** I'd like to speak for a few



minutes on the proposal to remove education funding from the property tax base. The board's position is that this is fundamentally desirable. I'll run over a few of the most obvious reasons for you.

Obviously, it recognizes the transportability of education benefits between municipalities and areas in the province, and it equalizes education opportunities.

From our perspective also it's important because it serves to equalize the education tax treatment for business. It also recognizes the trend in this direction that is evident abroad and is increasingly evident even within Canada across the provinces.

Also, it's important because it can lead to education vying for or competing with other legitimate spending responsibilities of government for what is becoming increasingly scarce funding. That, we feel, should help in the process of negotiation between the province and those employed in education.

While all of the above are very good and sound reasons for endorsing the proposal, I would add the additional comment that we believe the effect of this proposal can be carried through without undermining the accountability of local educators.

All of this, as I say, we view as extremely beneficial, but we do have a few notwithstanding.

The change should not take place until education costs have been thoroughly examined and reviewed. The change should not take place until a deterrent has been put in place to prevent municipalities from moving into the tax room vacated by education funding. I know the recommendations of the Fair Tax Commission itself recognized this problem, but I think it's important before any move to implement this to be sure that those constraints are binding and put in place for a protracted period of time.

Steve already mentioned the very high burden that Ontario businesses pay in terms of their municipal taxes in contrast to those in the United States: 47% in Ontario, 16% in the US on average. We believe this should not go forward until at least some thought has been given to actually excusing the business sector from this taxation rather than just reassigning it to the provincial field.

It should not go forward, we believe, with that 10% pop-up provision that allows local school boards to increase their local funding by 10%. We believe it should not do so because we are concerned first of all, in essence, that it's retrograde—it obviates the purpose of the proposal in the first place—but also that where this has been tried elsewhere, there's a tendency for it to creep up over time.

The final point: This proposal should not be implemented through an offsetting increase in the income taxes. Steve mentioned that already. We have already an income tax system which is sufficiently progressive and sufficiently anti-competitive that we cannot push the burden of additional funding on to this tax.

**Ms Maralynne Monteith:** We consistently come back to the same refrain: to be cautious about dealing with only the revenue-raising side without considering the expenditure side.

Tax reform is something that if it's going to be done, we feel very strongly should not be done in a vacuum, and certainly shouldn't be done in the context of the cafeteria style of picking and choosing among 150 recommendations. Any resulting system is going to have serious flaws in it because it will not take into consideration the total impact on the entire system.

I'll deal with some of the specific areas where we actually felt somewhat aligned with the Fair Tax Commission, again with the proviso that this is a vacuum speech I'm giving right now and one piece of the pie may be outweighed if something else doesn't balance it.

We are very concerned, as was pointed out in the previous presentation, with the imbalance between the burden that businesses are bearing versus the residential sector in the property tax area. It's well past due, in our view, that that whole area needs to be reformed.

It's probably best brought up to the provincial level where you get a degree of consistency throughout the province and that people who are living across the street from their neighbours—we have certainly business situations where moving across the road has a substantial effect on the bottom-line costs or property taxes, and that's simply not a tenable system to have in place.

We strongly believe that whole system has to be looked at and has to be corrected. This is certainly a good opportunity to update our property tax system.

The harmonization of GST with the Ontario provincial sales tax has always been something we felt strongly should occur, not only on compliance costs reduction but taxpayers being able to deal with a simpler system, reducing of cross-border shopping. It's simply not tenable to have a two-tier system of sales tax, given the cost to the consumer and the business person of complying.

In the corporate income tax area, the Fair Tax Commission was fairly content to recognize, and we believe this is true, that competitiveness is critically important when formulating a corporate tax structure; that you have to remember what your neighbours are doing, because businesses are indeed mobile.

The corporate minimum tax: It is our hope that the Minister of Finance will go back to the table on that particular budget recommendation and perhaps turn it around, based on the Fair Tax Commission report. We believe this is a tax that is particularly hard on businesses when they are cash-poor, because it doesn't really care if you have cash to pay it, and it has been inordinately complex in other jurisdictions that have tried to use it. For all the reasons that the Fair Tax Commission said we probably don't need one and shouldn't have one, we support it in that position.

Finally, in user fees, we support that proposition, balanced, however, by the problem that you can get into with dumping, where the cost of user fees is outweighed and people stop using the proper environmentally responsible approach to waste disposal.

The one area where we feel very, very strongly that the basic assumptions upon which the Fair Tax Commission report are built need to be viewed through a bit more of a microscope is our concern with the position that our



system needs to be made fairer, with emphasis on moving towards the progressive type of taxes, that is, income tax, and away from the regressive taxes such as property tax and consumption taxes.

Based on all the evidence we've been able to see from the OECD and indeed from the Fair Tax Commission itself, it's very hard to support the position that the Canadian tax system is not progressive. It is the most progressive tax system in that it relies the heaviest of all industrialized countries on income tax rather than on the consumption-property tax part of the equation. Consequently, we also have the most volatile system in terms of reliable tax revenues, because when people are unemployed, that tax base just evaporates.

It is our view that this basic assumption is simply not tenable and that a government has to be responsible in looking at its obligations to have a reliable source of revenues and that therefore this is one of the principal reasons why the income tax system is not the proper system to look to to fund education, because the reliability of that tax base is simply not borne out.

It's our view that the more appropriate position or tax base to look to is indeed the consumption tax base, the sales tax base. We believe it has the correct balance of reliable revenue source. Also, its regressivity can be ameliorated through tax credits and various other items, but not in such a way that you're going to have spikes and valleys on your tax revenue base. We think the education of the Ontario youth is very important and cannot be rested on something that just may not come up with the dollars next year if the economy has a swing.

The other positions we've taken in our paper really relate somewhat to the federal tax jurisdiction, such as RRSP deductions and dividend tax credits etc. We simply would support the position that has come out in the newspapers today by Mr Malcolm Hamilton of William Mercer, who had some very interesting statistics to tell us about the fact that the private sector is desperately, woefully underfunded on its retirement savings and that to cut it off any more simply does not make sense.

Finally, we'll just leave you with the plea that, whatever you're going to do, do it in context. Look at the expenditure side hand in hand with the revenue raising side. Hopefully, we'll move towards a system that is evenhanded, reliable and doesn't need to be any more progressive than it already is.

1530

**Mr Lowden:** Let me take you through the charts quickly. If you turn to the back of our report, after page 9, that first chart sets out what's been happening to the total tax burden in Canada versus G-7 countries and the United States. You can see our tax burden is rising at a much faster rate than it is elsewhere.

The second chart shows the total tax revenue that's derived from personal income tax in Canada versus other countries: Canada at 41% of total tax revenues, the United States at 35%, the G-7 countries at 26%.

Our third chart looks at the marginal income tax rates in Ontario versus the 13 largest OECD countries. In 1988 Ontario was 45%. The proposal is that the maximum rate

now go to 60%. We're up at 53.5% or something today, in 1994, and it's proposed to go to 60%. The OECD countries were 74%; that's their former high. They've cut it back to 51.6%. We're going in the opposite direction from the rest of the world as far as top marginal tax rates are concerned.

The next chart deals with the actual personal income taxes collected versus the announced changes in Ontario since 1985. You can see that there was a period there where we announced modest changes and picked up huge increases, and now we're announcing huge increases and watching the revenue disappear. This we call the tax ceiling; it just doesn't raise revenue any more.

The next chart looks at marginal income tax rates in the various Canadian provinces. The Fair Tax Commission proposal is that the highest rate should be 60%. There is where our provincial competition lies, and you can see we'd be in difficulty in that structure.

The next chart looks at the total share of tax revenue that's derived from consumption taxes in Canada versus other countries: the European Community 32%, the OECD average 30%, Canada 27%. So we're behind in consumption taxes as compared to our competition.

Maralynne referred to the volatility of personal income tax and corporate income tax as compared to consumption taxes or retail sales taxes, and you can see the changes in the years 1988 versus 1991. It's true that when you get into a recession, income tax doesn't provide much of a revenue source for government.

The next chart just looks at the aggregate of our retail sales tax and GST across the country.

The next chart Don McIver referred to. Ontario's businesses pay a total of 47% of the property tax burden. In the United States in 1957, businesses paid 45% of the property tax burden. They are now paying 16%. That's a very difficult competitive environment for our businesses to deal with.

I referred to the fact that property tax, commercial, industrial and business taxes are now the largest tax paid by businesses in Ontario: \$4.7 billion versus provincial corporate income tax of \$3.2 billion, health tax of \$2.6 billion and workers' compensation premiums of \$2.5 billion. Property tax is the big item at the moment.

The next page just looks at some tax burdens factored on a per-square-foot basis in major centres in North America. You'll see Toronto there at \$19.60 per square foot in our prime office space versus very substantially less numbers in the US, even in such high-cost places as New York City.

The final chart shows—this is a difficult concept for me but let me try it this way. The Ontario Municipal Act, the Education Act and the Ontario Unconditional Grants Act require that the rate of tax on residential property be set at 85% of the tax rate on commercial and industrial property; or, if you look at it the other way, commercial and industrial properties should be 117.6% of residential property. That's what the legislation calls for.

Our understanding of the actual relationship, based on the assessments versus real market value, is more like 103%. This information, I believe, is contained in the



property tax working group of the Fair Tax Commission. In other words, we have overburdened the business community badly. Residential property taxpayers have shifted the cost to the business community. It's not competitive with our environment and it's not in accordance with our legislation. We need a fair property tax that is applied consistently.

We'll take a few questions.

**Mr Sutherland:** I appreciate your presentation. I was a little surprised by some components. You're suggesting that sales tax is a better way of going than increasing income tax because you feel it's more stable. We're just finishing up our hearings on the underground economy, and I'm not so sure I would agree with the assessment that sales tax revenue base is any more stable than an income tax base.

**Ms Monteith:** That's just based on the material we have available from OECD sources, that indeed it is less susceptible to movement, less volatile.

**Mr McIver:** The suggestion also is, that you can have a broader base for the retail sales tax than you currently have now. Obviously, with harmonization with the GST, that would result in a much broader range of services being included in the tax, which of course is less susceptible, at least to cross-border purchasing.

**Ms Monteith:** Which is not to say we wouldn't make some amendments to GST to help that stability.

1540

**Mr Gerry Phillips (Scarborough-Agincourt):** I appreciate the thoughtful, as usual, comments from the board of trade. I'd just follow up on Mr Sutherland's comments so I understand. You're saying that your organization would be supportive of the province-wide pooling of commercial property tax. You aren't looking at any substantial reduction in what your members pay, but it's a fairer way of raising the money, and that for the \$3.5 million that currently is raised from residential property tax, some form of higher sales tax and a broader sales tax is strongly preferable to the board than the increase in the income tax?

**Mr Lowden:** I think the reality is that Metropolitan Toronto businesses have been abused by residential taxpayers much more than the province at large. The result is that Toronto businesses would be better off in that larger pool on fair market value or rental value.

**Mr Phillips:** That's not inconsistent with what we heard from the city of Toronto when it made its presentation here last week. The board's assessment, I gather, on some analysis, is that your members would benefit from province-wide pooling. I gather, reading between the lines, you also believe there's some expenditure savings in moving in that direction as well.

**Mr Lowden:** Very much so. We think the expenditure levels in Metropolitan Toronto have been much higher than they are in the rest of the province.

**Mr Gary Carr (Oakville South):** I appreciate some of the comments you made. I want to go to what this government and the federal government are doing with their job creation program, the infrastructure program. I understand, as a matter of fact, that the Prime Minister is

speaking tonight at one of the boards of trade.

**Mr Lowden:** That's correct.

**Mr Carr:** Your board of trade?

**Ms Monteith:** Yes.

**Mr Carr:** What do you say to the Prime Minister, and we talked about the deficit and the debt, knowing that we're now going to spend \$6 billion? My municipality likes it because it's only kicking in one third, but there is only one taxpayer. Tonight, as you sit down over dinner with the Prime Minister, are you in favour of the capital structure program he's putting in place, or if you had your way, would you endeavour not to go into this major program? What are you going to tell him tonight?

**Mr Lowden:** I'd say, "You have to economically justify these expenditures." There's certainly room for government to make capital expenditures but only if they can be economically justified. They have to be good long-term value or we shouldn't do them.

**Mr Carr:** And the money should be taken out of existing programs?

**Mr Lowden:** You have to take the money out of existing programs. We don't have any capacity for increased spending, so we have to take it out of existing programs. It's that simple.

**Mr Carr:** Some of the things you talked about are similar to what Alberta does. I think Mr Sutherland's right. I like what they're doing. They're taking some tough measures, but I think at the end of the day they're going to be more successful. Would you agree that the province should have some of the tough measures that Alberta has, including its balanced budget provisions? Is that what you'd like to see a government of Ontario do at some point in time?

**Ms Monteith:** Very definitely. We'd like to see the fiscal responsibility come back into line, because we firmly believe that if we keep spiralling on the revenue raising side, that underground economy is just going to get bigger and bigger and bigger. You've flipped the pyramid on its head, if you will. Instead of spending your money building the capital base, you're just trying to shave it off the top. It's going to be a never-ending problem if we don't take some hard medicine now in terms of spending up to our credit limit and stopping.

The voters are telling you, "We don't want you to spend any more money because we're not prepared to pay for it." Maybe you should deal with that issue, that there is a wall that's been hit and people are saying, "I don't want to pay more taxes." The other side of that is that we have to deal with expenditures.

**Mr McIver:** One of the criticisms of the process of the Fair Tax Commission that I have had personally, and I've been involved in it to some extent, is that the premise is perhaps incorrect. Really what you need is a fair expenditure committee. What you really need to do is define what it is you should be spending your money on. You can determine after the fact how you should be generating the funds to meet the necessary spending.

**The Chair:** I thank the Board of Trade of Metropolitan Toronto for making its presentation.



## ASSOCIATION OF MUNICIPALITIES OF ONTARIO

**Mr Michael Power:** My name is Michael Power. I'm the mayor of the town of Geraldton, from the great northwest of this province, and a vice-president of AMO.

**Ms Doris Brick:** I'm Doris Brick. I'm the reeve of Ennismore township in Peterborough county. I'm a member of the board of directors of AMO, I am a past-president of the association and I did serve on one of the task forces for the Fair Tax Commission.

**Mr Power:** We propose to divide this between Doris and myself—Doris is well experienced and knowledgeable about fair tax matters—and then we have general comments we wish to make to the committee. We propose to leave sufficient time for questioning by members of your committee.

On a positive note, we'd like to acknowledge and to say how pleased we were that both levels of government, federal and provincial, were able to get together on the infrastructure program and how delighted we were that you involved a municipal representative in the final selection; namely, Bill Rice, chief commissioner from the city of Thunder Bay, will be involved as one of the people. We're very pleased about that.

One of the things we want to make very clear and very plain to the committee as we move forward this year is that we're not here saying, "Give us, give us, give us." We're here to make some concrete and very positive suggestions to you. One of the things that's happening, has been happening and will continue to happen both this year and next year, we believe, is that there will be major reform in programs, in the method of delivery of these programs, and that there will also be tax reform happening. In light of that, it's the position of AMO that it is absolutely critical to have consultation between the two levels and that we work together to achieve it.

As you're aware, 1993 was rather difficult for municipalities in Ontario because there were many changes to programs and to finances, euphemistically known as the expenditure control plan, which we all had to deal with, and the social contract, which brought experiences that municipalities have never really experienced before.

One thing we're really firm about is that the Association of Municipalities is convinced that governments at all levels must work together to find solutions to the problems we're facing. Some of them are new problems; some of them are old problems we never solved.

We have looked at, over the past year, a number of areas where the municipal sector is involved and where we play a part in the economic strategy of this province, so we'd like to make some suggestions in terms of the upcoming budget. As I said earlier, you will be delighted to know we're not saying, "Gimme, gimme, gimme." We're not asking you for an increase in unconditional grants. We haven't picked out various conditional areas where we are asking for 4% or 3% or 0%.

We do believe that the current practice that all governments have of downloading responsibilities can't be continued and can't be tolerated. The problems when you download still stay there; they don't even get removed off your plate. What we're saying is that we need a new way

of governing. For example, we're saying to you that real consultation and not pseudo-consultation must take place.

As a good example, it was suggested to us that today was the opportunity for AMO to make its input on the Fair Tax Commission's report, and we put it to you that this isn't consultation. We look at it as a first opportunity to make you aware of some of our thoughts. We believe there has to be proper consultation and we encourage this committee to take that under advisement and to move forward to make it possible and to insist that further and meaningful consultation take place.

You must understand there are times when we feel that as a municipal government we're country cousins, and that is because sometimes members of provincial governments forget to treat municipalities as another level of government and tend to sort of pat us on the head and say, "Now, now, go along and do this or do that." We're suggesting to you that isn't good enough.

## 1550

For example, during the ECP and social contract discussions, municipalities were very heavily involved, but initially, and even in the final analysis, the province did fail to recognize the difference between provincial and municipal fiscal years, which put an inordinate burden on the municipalities, because most people don't realize that municipal fiscal year is January to December and provincial fiscal year is April to March. When you're coming in with a program that takes effect in April, it places an inordinate burden on municipalities which have already done their budgeting. What we're suggesting to you is that when you're announcing programs that have fiscal impact on municipalities, you should be recognizing the difference in fiscal years and prorating it or bringing it in at a time when it makes sense.

While we're not asking you for increases in unconditional grants, we're saying to you that there isn't room for further cutting of the unconditional grant structure. We think that would send out from this government the wrong message to municipalities about this government's commitment to economic recovery, and certainly this government has been very firm in saying it wishes to have economic recovery in promoting programs—Jobs Ontario and other kinds of programs—to try to stimulate this recovery.

Also, a program we're all in together, the infrastructure program, could be seriously hurt if we have further cuts to the unconditionals which leave municipalities with less room to manoeuvre with their budgets as well. As we all know, we're anticipating that through the infrastructure program in this province we will be able to create significant economic activity together and create many additional jobs. Certainly the Premier of this province has recognized that.

We know it is always very important to look at new programs. All of our constituents, be they at the municipal level or the federal level or the provincial level, are all the same constituents, but they all come to us and they always have nice ideas and good ideas about new programs that should be brought into effect.

What we're saying to you very firmly today is, when



you're bringing new programs into effect or considering them, please also consider the ongoing costs and don't bring into effect a new program that's downloaded to municipalities where we have to pay the ongoing costs. We don't have any other place to get it than you do. An example that took place in the past, of course, was on court security. That made a very dramatic impact on municipalities.

There is a suggestion that in an attempt to meet a proposal that is coming forward to attract people who have defaulted on family payments, the marriage licence system will be used. We say to you again, if you're planning to use the municipalities for that, please consider the costs, look at them thoroughly and consult with us before this is done.

For example, in 1993 in the Ontario budget, we're not convinced that the province considered the impact on the municipal sector when the retail sales tax was extended to insurance premiums, parking revenues and building materials. We really aren't convinced that was considered and we think it was an oversight. What we're saying to you is that you must be more cognizant and you must think ahead when you're putting new revenue generation schemes in place to see how they will impact on the areas where the revenue generation is coming from. I'll give you an example.

When you talk about parking and a tax on parking revenues, most meters aren't designed to handle GST and the rest of it, so you have that kind of difficulty. We just think it probably wasn't thought about in advance. We ask you to do that.

We're very encouraged by the fact the province will be conducting a cumulative impact assessment of its policies and programs on municipalities, as was agreed to in the municipal sector agreement under the social contract. AMO is extremely pleased that the impact of policies and programs on municipalities will be assessed and we recommend that it should be an integral component of future budgetary processes.

One of the things that we are concerned about is the level-of-care funding. For example, in long-term care many municipal homes are looking at cuts to funding, and yet the service levels have to be maintained. We're a little bit concerned as to how we're going to do this. We're urging you that, in terms of the homes, you continue at the present moment to maintain the funding and to fund the shortfalls until such time as we're able together to look at other things.

Those are the major thrusts in terms of our thoughts on budgetary process and how the budget can be constructed. We turn to Doris for some thoughts on the Fair Tax Commission.

**Ms Brick:** In the time allotted to us we can't go into a lot of detail on the Fair Tax Commission report, so we will very briefly. We have left with you some information that has been approved by our board on a preliminary review of the document. Our main concerns deal around the funding of education, the assessment system, the intrusion into the municipal tax base and the shifting, more so than reduction, of taxation.

The Fair Tax Commission underscored the importance of the municipal sector and the need for local government finance reform when it dedicated over 60 of its 135 recommendations to issues relating to property tax reform. Therefore, the government is encouraged by us to consult with and involve local government representatives in its activities leading to the introduction of any of the commission's recommendations.

AMO supports in principle the commission's recommendation that education be fully financed by the province and therefore removed from the property tax base. We propose that the education portion of commercial and industrial property taxes should be replaced by greater revenues from corporate income tax and other general revenues. We agree in principle that municipalities should not rush in to replace the tax room vacated by the reduction of that portion of the residential property tax which had formerly gone to education, but we do not support the recommendation that municipal tax rates should be subject to provincial regulation during a transition period. We consider this to be an unwarranted intrusion into the municipal tax base, and as such would undermine local municipal autonomy.

Regarding the recommendations dealing with assessment, specifically how the province would finance education, AMO encourages the province to rely more heavily on revenue sources which are more progressive than the property tax.

Proposal 82 that deals with assessment in the Fair Tax Commission report we see as a proposal that certainly has some merit. We think it can work in an urban situation, but we do have some concerns about other parts of the province and its application, especially in rural Ontario. Due to the magnitude of the provincially negative outcome, AMO strongly recommends that any replacement of the current assessment system be fully tested before being implemented province-wide.

Certainly another matter of great importance to AMO that we're gravely concerned about is the commission's recommendations calling for the establishment of a provincial property tax on commercial and industrial property. These recommendations constitute an invasion by the province into the municipal tax base.

We have been on record as being strongly opposed to the pooling of commercial and industrial assessment for education finance purposes. Once again, the education portion of commercial and industrial property taxes should be replaced by greater revenues from corporate income tax and other general revenues.

In closing, we ask that the government consider that municipal administrations require some breathing space to allow them to plan for and adapt to the significant financial challenges we face. This association supports the commission in its interest in treating education finance reform as a package, recognizing that the interplay of all the recommendations made by the commissioners will have to be considered as any one recommendation or group of recommendations is implemented.

The magnitude of the recommended changes necessitates further consultation with key stakeholders. AMO believes that an impact analysis team consisting of



representatives from the provincial government, municipalities and school boards should be established for consultation before any implementation of the commission's recommendations is undertaken.

Thank you for this opportunity to speak to you. We look forward to trying to respond to your questions.

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**Mr Crozier:** I've always considered AMO to be a conscientious representative of the municipalities in Ontario.

Having been very recently the mayor of a small urban municipality in this great province—I'd like to discuss a number of the issues, but I'll take just one—I agree that it may be an intrusion into the municipal arena for a limitation to be put on by the province if there were some changes in the education tax so that the municipalities couldn't jump into that big void it would leave. I would be interested to know, though, how we might be reasonably assured that this wouldn't happen, because I'm afraid there are some municipalities that would abuse that. You might help us as to whether there were any discussions about how that might be controlled, and then some night at AMO I'll sit down with a drink and ask, "How is disentanglement coming?"

**Ms Brick:** Most of us in municipal government recognize that your electors are our electors. We know the taxpayers will not tolerate tax increases today, and we like to think we're responsible too. If we impose taxation levels on our ratepayers as a result of that space, we're going to be turfed out of office. It goes back to the point that we have to respect you as a level of government, but the respect should go both ways.

We would like to think we would be financially and fiscally responsible in the manner in which we would deal with that space. Most of us just don't have room for growth in taxation unless we start to go into debt, and we don't believe, being fiscally responsible, that is a proper venue for us to approach at this time either.

**Mr Power:** One of the things to pick up on is the fact that municipalities over the last few years have shown themselves to be extremely responsive and responsible. If you look at the rate increases in the municipal portion of taxes over the last few years, you will find that the vast majority, 99% of the municipalities of this province, have held any tax increases to between 0% and 2%.

Also, as Doris as pointed out, municipalities aren't asking for the authority to infringe on the province, right? We have full confidence in you as electors and as members of the Legislature, and we suggest that you should also have full confidence in us as elected representatives at the municipal level.

**Mr Crozier:** There's your first mistake.

**Mr Phillips:** The recommendation from AMO on provincial funding for the upcoming budget, which we're wrestling with right now, is essentially for a freezing of the grants. Is that a fair way to characterize it, as maintaining the absolute levels from the previous year?

**Mr Power:** What we're saying to you is that the unconditional grants should not be arbitrarily reduced. You may want to enter into discussions with municipal-

ities further down the road on other items dealing with disentanglement, as Mr Crozier has brought up, because there are other agenda items on the table that the government has placed forward that will require discussion. But we're saying to you that the unconditionals shouldn't be arbitrarily attacked as a method of saving dollars and downloading on to the municipalities.

**Mr Phillips:** In terms of where things are right now out there, because I very much believe you have your hand on the pulse, probably a lot better than we do just because you're much closer to the electorate, what's happening right now in terms of the economy? Are your tax payments up to date? Are they falling behind? Is that something we need to be concerned about? Are your municipalities beginning to see the turn in the economy that we think is here now?

**Mr Power:** Most of the municipalities aren't really seeing the turn in the economy. Maybe we're all getting used to things being not so good. In terms of taxation and dollars coming in, we've now started into 1994. The first interim tax payments will be coming in from most municipalities, so I can't give you a firm example as to what's happening in 1994. In 1993 we did notice a slight increase in the lateness, so that by end of December 1993, when provincially you might be trying to run around 12% in deficit payment on taxes, in some municipalities you were running over 20%.

One problem hitting the large urban areas in terms of all the Metro Toronto municipalities is the business tax area. That has always been a major problem for them and continues to be so. Our discussions with large urban municipalities haven't shown any tremendous increase in economic activity that has led to greater tax revenues or put them in any better position to handle things.

In the northwest of Ontario, for example, we're a little more remote and usually things happen to us about a year or two after they happen to you. I have to tell you that we are now, for the first time, really seeing the recession in the northwest. It's affecting us in some of our smaller communities. It's sort of novel for us, and we're having to learn how to deal with it.

In my own municipality of Geraldton, if I may be very parochial, we saw last year that our uncollected taxes had increased from 12% to 17%. That causes us grave concern, so we've been attempting to find innovative ways of getting them collected on a sliding scale and almost doing anything. You want to keep the businesses in place, so you'll do almost anything as long as they can try to make some payments.

**Ms Brick:** In our area it's a mixed bag. People are a little slower, but there is a lot of innovative collection going on. People really want to keep their taxes paid up to date, and there are a lot of arrangements being made that maybe 10 years ago wouldn't have been considered. But there is certainly in the business community a struggle. Even in the residential, where people are unemployed, there's a lot of difficulty.

The rates vary. In some places they aren't having difficulties; in others they are. Local conditions are pretty well determining what the amounts are. East of here, where I come from, you're likely looking more at 8% and



10% on collection, where Michael says it's 12% to 17%. The impact the recession has had on communities varies.

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**Mr Cousens:** When you say no cuts in unconditional grants, no new programs, I'm reminded in part of what the previous Treasurer, Mr Nixon, had to say. He felt that Ontario municipalities had tremendous reserves. The province, according to Mr Nixon, was going into debt while municipalities had surpluses, and municipalities had that freedom to establish more debt. I see you resisting that impulse, that the Liberals said and this government is now saying that there's tremendous elasticity left with the municipalities. Are you disagreeing with that?

**Mr Power:** I don't think we need to apologize for the fact that municipalities are well run and well managed. As a result of that, they have avoided excessive debt and have attempted always to put money aside in order to pay for the things they foresaw they would have to pay for in terms of equipment or new programs if we chose to create the new program.

Where we're saying we don't want new programs is when a program is mandated upon us by the province that we have no say in but must share the cost of. We're saying that's not right. There should be discussion before ever that happens.

In terms of debt, we can talk about that around and around, but it doesn't matter whether the debt's at the municipal level, the provincial level or the federal level; it's all there and it has to be dealt with. If the desire is for the province to download to the municipal level, remember that under the Municipal Act, because you created us and you really are a little bit afraid to give us the authority and leave us on our own, you also have to take the responsibility if a municipal government becomes irresponsible and increases its debt beyond its ability to pay. That normally doesn't happen. When it does happen on occasion, the province steps in and very quickly it's cleared up, not through grants but just through proper management. I don't think we want to apologize for that.

What we're saying is, for new programs that you mandate to us, you provide the funding. If we want to persuade you of a new program and try to persuade you to help us fund it, that's fine.

**Ms Brick:** To elaborate on the reserve funds that municipalities have, it's a good thing that municipalities did use some fiscal restraint a few years ago and saved some money. It's the only thing that's saved us today and it's the only way that most of us will be able to afford this infrastructure program, because we know we can't levy tax increases to take advantage of the program. If we didn't have funds in reserves, we wouldn't be able to take advantage of the situation.

The other thing is that when you talk about the reserves that municipalities hold, some of them are kept in funds for specific purposes and can only be used for those purposes. They can't just be taken and spent willy-nilly as we might like to choose on a given day. I think that had we not had the reserve funds, we'd be facing many of the problems that the province and federal

governments are facing with debt, and we aren't supposed to deficit-finance.

**The Chair:** Thank you, Mr Cousens.

**Mr Cousens:** I didn't have as much time as the Liberals had.

**The Chair:** You had just as much time, but the people making the presentation didn't take quite as long to answer, to be quite honest and fair.

**Mr Cousens:** I got good answers, though.

**The Chair:** Yes, you did. Very succinct.

**Mr Sutherland:** My questions may be a little tougher. I represent the riding of Oxford. Oxford county is the only restructured county in the province. They did that 20 years ago, and I think it has worked out very effectively.

We hear a lot about boards of education, wanting to reduce the number of them. What about municipalities? There are some 837 municipalities. Much of their structure was set up at the time of Confederation when we didn't have telephones, we didn't have faxes; we still had a horse and buggy. What about municipalities all across the province, and particularly counties that haven't restructured, taking a serious look at doing something like Oxford did, which came up with its own model, but seriously reducing the number of municipalities to reduce the amount of administration costs out there?

**Ms Brick:** Michael says that's mine. I guess coming from a county, it is. Indeed, there are a number of restructuring studies going on. There is one in Peterborough county. It's a very difficult issue to deal with. Certainly there are many of us who recognize that Oxford is very fortunate. They went through this years ago and are up and running well, and that's where many of us should be.

However, it's a very difficult local thing. There's turf protecting, there are a number of things, but many of us in local government recognize that it's something whose time has come. For cost efficiencies, we are all going to have to look at it and bite the bullet, whether it's this year or next year, and there is some movement forward. Simcoe county is showing the rest of us a good example, Lambton has, and it's something whose time has come. It's a result of some downloading from the province, because as small local units of government which are very close to the people, we just can't afford to run many of the services that are coming our way. We don't have the administrative capability and the financial backing to be able to carry on.

**Mr Sutherland:** On the infrastructure program, do you have any sense from the early stages what percentage will be done from reserves versus what percentage may be done through some debenturing?

**Ms Brick:** Not at this point in time. It's too early to be able to anticipate that.

**Mr Power:** We are getting some feeling from a lot of our municipalities that they will to the extent possible utilize their reserves or maybe put off buying a truck or those kinds of things. Only in the large projects will you find too much debenturing, I think.

**The Chair:** I thank AMO for making its presentation.

ONTARIO ASSOCIATION OF NON-PROFIT HOMES  
AND SERVICES FOR SENIORS

**Mr Dan Oettinger:** We represent the Ontario Association of Non-Profit Homes and Services for Seniors. We are this year, as a matter of fact, celebrating our 75th anniversary. We are, to the best of our knowledge, the oldest non-profit seniors' care association in Canada and probably in North America and we take some pride in that service over this three quarters of a century.

My name is Dan Oettinger. I'm the president of the association for this year. My colleague is Michael Klejman, our executive director.

OANHSS membership encompasses over 220 non-profit agencies serving over 10% of Ontario's seniors. That includes some 25,000 facility beds and approximately 10,000 seniors living in non-profit seniors' housing independently.

With that bit of background, we have presented here to you today a full brief. We will highlight some of it, in the interest of time, and invite questions at the end.

For 75 years the association has represented non-profit long-term care providers in Ontario. During that time, our members have travelled the distance from running poorhouses for the aged and infirm to managing comprehensive, multiprogram services suited to the needs of today's seniors.

Our members have provided leadership in developing high-quality programs for seniors both in facilities and in their own homes in the communities. We've pioneered the idea of supportive housing through private home care, group homes and satellite homes and created adult programs, respite care and emergency response units in order to assist care givers in the community. Our members have initiated in-home community programs such as Meals on Wheels, and also introduced the idea of partnerships in cooperation with community-based agencies long before it became the fashionable thing to do.

However, current fiscal restraints, including the social contract, long-term care legislative and policy changes, the demands of labour legislation and wage settlements have presented our members with a greater challenge than we've ever faced before and quite frankly have brought some of them to the point of breaking under that fiscal load.

We're being only too realistic when we express the alarm of our members at the funding crisis in homes for the aged. In 1993 our member homes lost a total of nearly 30,000 hours of care to residents, affecting some 460 staff positions; 69 of our members reported that over 170 people had actually lost jobs, while many others had their hours significantly cut.

While costs were increasing because of provincially mandated program changes such as WCB, pay equity, arbitrated settlements and taxes, our revenues were also decreasing as a result of the social contract, as well as reductions in resident copayments. Preferred accommodation charges have dropped. Municipal contributions and donations from the voluntary sector have also dropped.

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You no doubt have heard and will hear from many

organizations and individuals who believe Ontario's primary budget priorities should focus on expenditure control. We would like to suggest that the Legislature must consider three issues more crucial to the future wellbeing of Ontarians. Our presentation will focus on these three areas:

(1) The need to review spending priorities in programs and services. We believe a review of priorities will change some of the ways the Legislature does funding.

(2) The current problems with developing revenue sources for long-term care facilities.

(3) The impact of provincial policy decisions on the rising costs of operating long-term care facilities when there is no additional funding forthcoming.

First, a review of spending priorities: We recognize that there are many demands on the provincial tax base. Among those demands are residents in long-term care facilities; as a matter of fact, those who built this society that all of us enjoy. Since 1992, changes in the funding and levels-of-care requirement in those facilities have created a crisis that threatens the level of care for some 56,000 frail residents.

Until 1990 municipalities were funded on the basis of negotiations with the area offices of the Ministry of Community and Social Services, an arrangement which enabled municipalities to contribute from their own resources to secure a higher provincial grant and thereby better service for the senior.

Capping introduced in 1990 imposed limits on provincial contributions to the homes which exceeded the provincial municipal average per diem. Charitable homes were funded based on a legislatively defined ceiling that by 1992 had been equalled by funding to the profit nursing home sector.

In 1992-93, the total funds expended on facilities was approximately \$1.033 billion. In 1993-94, funds allocated had dropped by \$30.5 million despite the fact that Ontario's expenditure reduction plan showed no reductions for long-term care due to the implementation of long-term care redirection.

For the same fiscal year, homes for the aged developed their budgets based on an anticipated average daily rate of \$90. In the fall of 1993, after all that planning, we discovered that available funds translated into an actual daily rate of less than \$80. This is intended to cover nursing and personal care needs, accommodation and food, activation and recreation and social support for elderly residents with severe physical and cognitive disabilities, people who simply cannot remain in the community. The number of severely impaired residents will increase over the next few years as the percentage of our elderly in this society increases and as more people remain in the community with support services.

Currently some 63% of residents in municipal homes and some 14% of residents in charitable homes need care that exceeds \$90 a day, and these numbers continue to escalate. Unfortunately, these homes are faced with levels-of-care per diems which average only \$79.61 from the province.

Originally, as a part of long-term care redirection, the



province agreed to red-circle contributions to the homes. Homes would then have to absorb all new costs, such as provincially arbitrated salary increases, utility charges, pay equity and so forth, but at least our revenue would have been held. Only recently, we've been informed that the province may not even abide by the commitment to red-circling and that the cost impact on these homes would be even worse than we'd anticipated originally.

By comparison, we've shown some of the per diem funding levels for other social programs in the province: Young Offenders Act, for secure custody under MCSS, \$300 per diem; Young Offenders Act under Correctional Services, \$275 per diem; jails and detention centres, \$118; other correctional facilities, \$131; developmentally disabled in schedule 1 facilities, \$241 per diem.

Some of you may be aware of the rather extensive and rather negative coverage in the media of one of our member homes in the city of Brantford recently, where the public institutions inspection panel compared it rather negatively to the care provided for criminals. I would hasten to add that some of those comments were taken somewhat out of context and don't necessarily represent reality. None the less, when you consider the average of \$79.61 per diem to serve our seniors, many of them extremely dependent, compared to some of these other social services, no wonder the panel said we treat our criminals better than we treat our elderly. If in fact red-circling goes, that particular home would probably lose something in the order of \$20 per diem, which would be absolutely devastating.

Many facilities in these programs are funded 100% by the province, incidentally. Community-based residential programs may be supplemented by volunteer funding, but keep in mind that the average senior in the home for the aged pays about \$33 of that \$79.61 himself or herself as opposed to 100% funding by the province for these other programs. The difference in that funding level should make obvious to you the kinds of problems that we're suffering.

In addition to that, we've examined the daily costs of community care for several other programs. Community day care for special-needs kids in Metro Toronto, for example, costs \$107 for the day programs in addition to the cost of professional and paraprofessional in-home services which would be funded.

I want to make it clear that our members do not, under any circumstances, question the value of these services. We give them here simply by way of comparison. We do question whether such vast differentials are justifiable, especially when the need to set priorities for public expenditure has never been higher.

Within the long-term care sector itself we have also compared the respective costs of facility-based care and care to people who are living in their own homes or apartments, so-called community care. The daily maximums for personal support and professional services—that is, long-term care for people who live in houses and apartments—have been set at fixed-dollar maximums of \$115—that's \$3,500 a month for the basic funding level—and \$216, or \$6,500 a month, for the enhanced funding level or higher levels of service. These figures do

not include the cost of services from other sources that may also be provided for the client.

Given the current average limit on the cost of 24-hour basic care for professional supervision in a home or facility—and I include here registered nursing staff around the clock—given that we have there \$79.61 a day, the province can hardly say that the introduction of upper limits ranging from \$115 to \$216 per diem is really that cost-effective.

We fully support the philosophy of maintaining people in their own homes as long as possible and as long as they wish. We have always been reluctant to get into the we-they kind of argument regarding comparative costs. However, we are witnessing not only the erosion of our funding base but the inexorable tightening of a noose that is driving many of our members into unmanageable deficits to the point of breaking. We're not here talking just about financial deficits for a home; we're talking about care levels that are provided for our seniors.

For this reason we urge you to insist on budget priorities that balance several factors:

- (1) The needs of the client;
- (2) Overall service outcomes;
- (3) The degree to which particular service packages meet the client needs; and
- (4) Comparative affordability.

We've taken the position that a realistic threshold for delivery of community services ought to be established based on fiscal, quality-of-life and service management considerations. This threshold would then give us an idea as to when a person requires service in a facility or some other mode or context as opposed to simply saying they should stay at home.

We suggest that the absence of a clearly defined service delivery threshold will result in increased risk to consumers and reduced cost-effectiveness for the system and in fact increased cost as well. The setting of a threshold will permit measurement of program affordability against clearly defined outcomes. We believe that the province should consider taking a more integrated approach to community-based care and facility-based long-term care.

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**Mr Michael Klejman:** I will summarize the points we make in the remaining sections; that is, the review of revenue sources, provincial policy decisions and their impact on operating costs and the current financial projections and impacts on the long-term redirection process itself.

Looking at the revenue sources, I'd like to draw your attention to one of the key components in the whole design, which was to generate an additional \$150 million in funds for the redirection process in facilities from changes to the revenue fee structure for residents which calls for the introduction of a new base of about \$38 a day per resident and then a sliding scale down to about \$26, depending on the income level. Our analysis of the data, and we reported this to the Ministry of Health on previous occasions, suggests that the revenue is not going to be realized.



About 50% of residents are actually in a position to pay that amount, and at best, that policy in itself will be a revenue-neutral development which will leave someone short of anywhere from \$90 million to \$60 million, in terms of the projected expenditures in this program.

The second issue we're looking at is the question of how user fees are applied within the long-term care sector, and we see quite a discrepancy in the current policies within the community service sector, where you can find the same services provided free of charge to some seniors, and the same services being subject to user fees in other situations.

Secondarily and of greater concern to us, obviously, is the significant discrepancies in the fee structure between services provided to residents in long-term care facilities and services provided to people living independently.

Finally and probably most important of our points in looking at revenue sources was the decision to exclude assets from consideration of residents' ability to pay for services. It has first of all created an unfair structure where individuals who have modest income are now expected to pay considerably above the base copayment level while other individuals who may have no significant or even modest income but have considerable assets of various types are paying less, paying the base copayment of around \$26 a day.

Secondly, it creates a situation where public funds have to be injected into the long-term care sector to cover the funds which otherwise would have been coming from those who are able to pay now or at least would have funds available when the estate is being disposed of at some point in the future.

The second area is provincial policy decisions on operating costs. I'd like to just give a couple of examples to illustrate the impact of provincial policy decisions in the past two or three years on our members.

Looking at the impact of pay equity implementation, the average cost to a municipal home in 1993 was \$2.1 million per home. Charitable homes experienced an impact of \$48,000 per home.

Another example that is very difficult to deal with is the impact of arbitrary decisions for awards. As you know, in our sector, we are subject to the arbitration process, and our members have experienced, on the municipal side, an average \$136,000 in additional costs as a result of arbitrated awards, and charitable homes \$16,500 per home, keeping in mind too that some of these decisions in the years 1992 and 1993 allowed for 29% increases in wages.

Another aspect of policies which the government is currently looking at is the implementation or at least receiving the report of the Fair Tax Commission. I noted that our colleagues from AMO spoke about it as well. We want to draw your attention to one specific recommendation contained in the commission's report and that was recommendation 103, which suggests the local property tax exemptions should be eliminated from organizations which are of charitable nature and function for the relief of the poor. To date, homes for the aged have been exempt from property taxes, but our housing members

have not been so fortunate and have often been forced to spend time and money on property tax assessment appeals and protracted legal actions.

The impact of recommendation 103 would significantly reduce the financial viability of our facilities, which are already under pressure. A most disturbing fact is that for our members this change will mean having to charge our residents or tenants more and, if they are not able to pay, reduce the services to them.

Finally, our members are concerned with the introduction of a costly inspection system designed to deal with some of the issues of standards of care in the for-profit sector and are, we believe, unnecessarily applied to the not-for-profit sector, despite the fact that we have developed an accountability system, have endorsed self-governance in our settings, have developed a multi-disciplinary approach to provision of care and have a clear accountability and control process through the volunteer community boards.

Looking at the implementation of redirection of long-term care, the last of our points, there was a key principle that we want to state. Provincial policy initiatives of the last decade have questioned the role of facilities in the delivery of care to seniors. The focus of these initiatives has been the independent senior living in the community, with independence and relationship to the community generally defined in terms of individual seniors' living arrangements. Therefore, living in a single-family dwelling or an apartment equalled being independent; residing in any kind of a group or congregate setting or a facility equals living in a facility and not being independent.

Let us make it very clear that independence is not a function of a physical structure or the size of the living unit. Isolated seniors with significant functional and cognitive disabilities and limited mobility can be just as institutionalized in their own homes as they can be in any facility. Independence is a function of the availability of practical choices, ability to choose and ability to carry through with those choices. Facilities are just as much part of a community service network as any other services are.

The second issue in the implementation of redirection of long-term care relates to the funding commitments that were made at the time of implementation. One of the provisions of Bill 101 guaranteed funding from the province and residents' contribution to be maintained at the level it was at on July 1, 1993, until the so-called case mix system brings the funding to appropriate levels. The intent was quite clear: to avoid reduction in services to seniors, care to seniors and to minimize the potential impact on staffing levels and to minimize layoffs.

Within six months of introduction of the new funding system and those commitments, we are now facing a possibility that the red-circling provision will be eliminated this year. At the same time, the province extended a guarantee of a minimum of 2.2 hours of care funding to proprietary nursing homes. It is apparent that some of these decisions are now made on the basis of immediate expediencies and immediate pressures rather than based on long-term vision and plan.



I believe all three parties present around this table have taken credit for and endorsed the concept of preference for non-profit services in human services in this province. We have seen since 1987 a loss of 4,000 beds in the non-profit sector in Ontario. We have seen since 1990 a cap on municipal homes' and since 1992 a cap on charitable homes' special grants. Six charitable homes have closed doors and over half of our 80 charitable homes are in deficit.

We also know that the omission of the role played by municipalities and their contribution is causing serious concerns. I note that in 1992 municipalities contributed \$90 million to the operation of homes for the aged and charitable organizations raised over \$24 million. The potential erosion of this funding because of provincial negligence is inexcusable. The impact it will have on the most frail of our seniors is difficult to imagine and I hope we avoid having to deal with any media in the future.

**Mr Oettinger:** There are a number of other financial problems that our member homes face as a direct consequence of the redirection process.

First, there has been a gross underestimate of revenues from residents. Secondly, the decision to exclude assets in the payment calculation has resulted in a major shortfall of revenue. Capping the number of preferred accommodation beds at 60% of total beds in facilities regardless of the physical layout of the building and the residents' ability to pay is also restricting revenue. The expectation was that residents in our facility will be able and willing to pay \$38 a day, when in reality resident copayments have been below that target and, just as significantly, revenues from preferred accommodation fees have been dropping as residents and some of their families have refused to pay.

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Probably the most telling result of the process used by the province during the reform is the fact that OANHSS members have refused to sign service agreements with the province. Our colleagues in the nursing home association sector have done likewise. This refusal to sign is based on the fact that the province has set unreasonable requirements while refusing to provide appropriate funding that enables us to meet those imposed expectations and, furthermore, some very negative and punitive consequences for not having met requirements imposed on us without commensurate funding.

I hasten to add we are in negotiations with the long-term care division of the province at the present time trying to work out language that is acceptable, but at the present time we simply cannot sign such a document.

OANHSS members have served seniors and their communities faithfully and well for 75 years. To the best of their ability they will continue to do, so but on behalf of our residents we urge this committee to examine the impact of current program and fiscal proposals on our members. In all the redirection documents, the province speaks of the importance of partnership. We represent that reality of partnership through our partnerships with providers, families, residents, residents' councils, volunteers and our staff, with municipalities and with charitable homes.

We hope that the strength of these community-based partnerships will not be further eroded by more legislative and policy demands on our members, inconsistent application of funding provisions in Bill 101 and revenue policies apparently calculated to force our members into deficit, or at best into reduced services to our residents.

We would like to leave you with four recommendations based on the above information.

We urge this committee to:

(1) Realign spending priorities to ensure that funding for facility-based care services for the elderly is commensurate with allocations to other facilities for people with severe disabilities.

(2) Recommend changes to current policy to permit charges on resident assets as opposed to income only.

(3) Recommend changes to current regulations to enable facilities to make full use of design advantages to generate income through charges for preferred accommodation based on the residents' ability to pay.

(4) Ensure that provincial policies are developed in a meaningful, consultative process such that new legislation, policy or program expectations are not introduced without commensurate resources being allocated in order to prevent lost jobs and services, a result which usually invalidates the intent of the changes so implemented.

Thank you very much. That concludes our presentation. We'd be happy to take questions if you wish.

**The Chair:** You had half an hour for your presentation and you've used that completely. Thank you.

MONICA TOWNSON

**The Chair:** Our next presentation this afternoon is not a presentation but indeed is Monica Townson, the chair of the Fair Tax Commission. She's here so that committee members may ask her questions about fair taxation and other things relevant to that. Welcome. I apologize for being a little bit behind in our schedule. It might be fair to start with 15 minutes per caucus.

**Ms Monica Townson:** I'm at a slight disadvantage. I wasn't quite sure what to expect because I hadn't had any contact with the clerk or with anyone. I did have a few opening comments that won't take very long.

I just wanted to say a few things about the process of the commission. I'm sure you're all aware of how it was set up and so on, but there are a couple of points that might be worth emphasizing.

As you know, this was a three-year process and our report was released in the middle of December. Our mandate, as you perhaps know, was to make recommendations to make the tax system fair. It was not to help the government find more money to reduce the deficit, which is what some people thought it was, nor was it to look at government spending. Although we certainly heard in our public hearings that people would have liked a commission to look at government spending, that was not part of our mandate. Nor was it to look at the overall level of taxes, which is another thing that some members of the public thought we should be looking at. Our mandate, as I said, was to look at really how the cost of paying for government services could be shared more equitably



among all taxpayers. Part of the mandate was to include people who were traditionally not included in tax policy process in the past. That part was achieved in a number of ways.

One was through the commissioners who were appointed, who were 10 people from a variety of different backgrounds and from different political perspectives. This was not a commission of tax experts. I imagine that was a deliberate choice on the part of the government.

Secondly, as you know, we had working groups which involved about 200 volunteers who looked at specific tax issues identified by the minister, and those groups reported directly to the minister.

Thirdly, we had what I think many people would agree was a very innovative public consultation process where we went out into about 17 different communities across the province and talked with people there on an ongoing basis and where people there volunteered their time and formed themselves into task forces to get together and talk about taxation and the concerns of their particular communities.

All of that was fed into our process, along with what commissions traditionally do, and that is an extensive research program. That was directed by an academic who has a lot of credibility in this field. We came up with about 50 research studies, most of which were done by tax policy people, by academics, by tax professionals, by some of the big accounting firms. Those studies are all being published by the University of Toronto Press. So that was the third element of the input into our process: research, the public consultation and the working groups.

Our recommendations, as I said at the beginning, were not to try and find out how to raise more money or whatever, so they are, overall, revenue-neutral. What we were aiming for was a redistribution of the tax burden so that the end result would be more progressive: We would change the mix of taxes so that the overall system would be more closely related to people's ability to pay.

The recommendations we made, and I'm sure you're quite familiar with these, can be grouped into a number of key areas. One key area that most people are familiar with was the one on education finance. We suggested that should be reformed, that the burden of financing education should be removed from the property tax and that it should be funded from taxes more closely related to ability to pay, imposed at the provincial level.

We also suggested a number of changes in the personal income tax. In fact, they might be categorized as a kind of national tax agenda which would involve negotiations between the provincial government and the federal government to change certain provisions in the Income Tax Act—those relating to capital gains, for example, and some of those like that—along with a harmonization of national sales tax with a provincial multistage tax.

Another key section of recommendations relates to reform of the tax system to better protect low-income people. Our estimate was that as a result of our recommendations, if they were all implemented, about 50,000 Ontario families would be raised above the poverty level.

Another key area was a whole package of recommendations on environmental taxes. We suggested that environmental policy could be achieved through the use of the tax system quite effectively, we thought.

Finally, in the area of business taxation, the key recommendations there were that there isn't really much room to increase corporate taxes, that Ontario's corporate taxes have to remain competitive with those in other jurisdictions, but that we did think Ontario should work with the federal government to minimize interprovincial tax competition and also tax competition in the corporate tax area at the international level.

We recommended some changes that would not give a preferential rate to manufacturing. That was based on a view which I think is part of a general consensus that the service sector is increasingly important in Ontario's economy. We saw no reason to penalize services in comparison with manufacturing. We thought the rate of corporate tax should be the same for all.

I won't go into any more details. Those were the key areas we dealt with, and I'd be happy to try and answer any questions you might have.

**Mr Carr:** Thank you very much for coming in and being prepared to listen to some of our questions and for helping out. I want to jump around a little, but I'll start with the whole issue of the property tax situation.

As you know, this government was elected on a promise of increasing the share of provincial funding. But one of the problems—I sympathize with them and I want your comments on this—is what we heard from some of the other presenters earlier today. I guess it was AMO. One of the concerns I have is that when you shift it to the provincial level, municipal politicians may jump in and fill that void and for a number of different, good reasons want to increase the property tax.

If the provincial government was to take over more of the share of funding for education, would you see it as necessary—and I'll just let you know that AMO said it didn't want any regulations or restrictions—for the provincial government to then come in with some type of cap on the municipal politicians so that we don't have that? I say this to be non-partisan, because governments of all political stripes have done it: When there's an opening, they jump in to fill the void with increases. I think Bruce mentioned that as well. If we do shift it, how do you see us protecting the property taxpayers who may get hit with big increases because municipalities, as an example, may now say: "Oh, boy, that's gone to the province. We can up our share of it now"? How would you see the province handling that?

**Ms Townson:** We considered that possibility, obviously, and in fact we make a specific recommendation that there should be regulation for a period of time.

**Mr Carr:** Would that be in the form of a cap?

**Ms Townson:** We didn't specify. I'm just trying to find that particular recommendation here but I can't put my hand on it. We made two points on removal of education from the property tax. Obviously, it could result in a major reduction in the property taxes, and clearly there would be a danger that municipalities might



jump in to fill the gap, so we suggested that initially there should be regulation by the province to prevent that from happening. But secondly, we made the point that we didn't think that would be necessary on a permanent basis, because voters at the municipal level, we felt, would be cognizant of the fact that this was supposed to shift the burden of education funding from property taxes to some other tax, probably mostly income tax. They would be aware of that and they would monitor what their elected officials are doing at the local level.

**Mr Carr:** So you are in favour of regulation?

**Ms Townson:** Yes, and in fact we specifically said that. It's in the recommendation here somewhere.

**Mr Carr:** On the same point, the board of trade said it didn't want any income tax. They looked more at the provincial sales tax. In order to do that, my rough calculations are you'd have to double the provincial sales tax from the 8% to 16%, and then you get the GST. You seem to be saying to do it through the income tax. You're not calling for it to go on the provincial sales tax.

**Ms Townson:** No. There's a specific reason for that of course. Our objective was to make the system more progressive overall, and sales taxes are not progressive taxes. What that means, as you know, I'm sure, is that if you look at the sales tax as a percentage of your income, the lower your income, the higher the percentage of that income you pay in taxes.

In changing the system of education funding, one of our key objectives was to make the overall tax system more progressive. You would not achieve that objective if you shifted the burden of education funding to sales taxes. In fact, you would probably make it more regressive, because you would shift a heavy burden on to those at the lower end of the income scale.

**Mr Carr:** One of the reasons the Fair Tax Commission was set up, and forgive me for being a little cynical, is that in the last provincial election the government said we could have all the spending we wanted, but it would come in and somebody else would pay. The presumption in the middle class and lower middle class was that this somebody else would be the rich. When the government got in, it realized the income that comes through the income tax from the so-called rich is very small. Unfortunately, the proportion paid by the middle class income tax and through the provincial sales tax is the bulk of it.

They weren't specific. We always thought there were these thousands of people out there who didn't pay, and if we just made them pay or increased them, we'd have all the money we need. The reality is that those people in that bracket can move their savings or their term deposits to other jurisdictions overnight. I believe when they got in and saw that, they said, "Now what do we do?" That's typical of all governments of all political stripes. When we can't implement what we said we'd do, we set up a commission to look at it.

If in fact it's so easy to tax the rich, to get the revenue we want to pay for all these programs—the OSSTF said that's basically all you do, tax the rich—how come a socialist government that was elected on that very fact didn't do it in its first two or three budgets? Why did

they need a Fair Tax Commission? Did Bob Rae become a fiscal conservative all of a sudden? If it was so easy to tax the rich to get the revenue we need in this province, why didn't they already do it?

**Ms Townson:** I have no idea. I'm not a member of the government. I can't speak for Mr Rae or anybody else in government. I was appointed to chair the commission. We fulfilled our mandate and produced the report.

**Mr Carr:** Isn't it true though, in the words of the Premier and some of the socialists, that we can't get the amount of income we need if we tax the rich? I'll say this, the reason we had to have the massive surtax on anybody making \$53,000 or more in the last budget is because that's where we get the bulk of our revenue. I always use the example of the Ford workers in my own riding of Oakville. When the last provincial election came and they thought somebody else would pay, they didn't think they were going to be part of the rich and famous. They got hit with a massive surtax in the last budget.

I firmly believe that's the reason. There's no other reason the government wouldn't. It had a mandate to tax the rich. Why wouldn't they have done it in the first three years? I recognize that you're not part of the government. I'm asking you, as somebody in charge of the commission, is the theory that somehow we can tax the rich in this province and get the revenue we need really not the case, that there is no more revenue? If you increase the tax levels on the so-called rich, all they're going to do is move their money to other jurisdictions.

**Ms Townson:** I can only repeat what I said at the beginning. Our mandate was to decide what changes could be made to the system to make it fairer. What we're suggesting is shifting the burden of how we pay for services that are provided through the public sector. We were not asked how we get more money, which is what I said at the beginning. The report does not advocate taxing the rich, whatever you mean by that. I don't know what your definition of rich would be.

**Mr Carr:** That's the problem. We don't know the definition.

**Ms Townson:** We do recommend changing the way taxes are raised, as I said earlier, by shifting away from regressive taxes like the property tax and shifting on to more progressive taxes like the income tax. We do recommend some changes in the structure of income tax, as you know, that the whole system be made more progressive, that there be more tax brackets, that there be more at the lower end and more at the higher end, so that it would go up more evenly.

Our recommendation for the wealth tax, for example, which I believe some people were advocating at the provincial level, as you know, we do not suggest that be imposed at the provincial level but at the national level. Incidentally, we also say in our report that if there is a national wealth tax, then income tax rates should be reduced accordingly.

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**Mr Carr:** Maybe you could be specific in terms of the cutoff. You've got to forgive the public: I know this isn't your fault, but they are very leery of politicians,



again of all political stripes—when people start talking about rearranging the tax structure. “Rearranging” to a lot of people means, unfortunately, “I get hit.” I’m talking about the middle class now. Political parties of all stripes have somehow done that.

In your recommendations, could you be very specific in terms of the amount? Most people know what their take-home is in a year, whether it’s \$40,000 or \$30,000. Who will pay more and who will pay less? I know it’s very complicated, because there are different levels. At what yearly income will people start to pay more? Maybe you could start with that. At what level, on a yearly basis, would people start to pay more taxes in terms of making it, as you say, more progressive?

**Ms Townson:** I don’t know if you have a copy of the Highlights document.

**Mr Carr:** Yes, I’ve read it.

**Ms Townson:** On page 109 you’ll see a table that says exactly that. It’s the estimated impact of our proposed changes on income of families in different income brackets. For a family in the income bracket of \$70,000 to \$90,000, for example, under our proposals, they would pay \$70 more a year, which is not very significant, I wouldn’t say.

Where it would be more significant would be families with income of \$90,000 or more. They would see a change in their disposable income of approximately 1.6%. In other words, their take-home or disposable income would go down by about 1.6%. Now, that is \$90,000 way on up to \$200,000, or whatever.

So for the middle group, that is, those within the bracket of \$30,000 to about \$90,000 family income, there would be very little difference. For those of less than \$30,000, there would be significant improvement. For those of \$90,000 and on up, their tax burden would increase somewhat.

**Mr Carr:** What about the bulk of people, the middle class, the \$30,000 to \$90,000?

**Ms Townson:** The bulk of the people would be in that middle group.

**Mr Carr:** The \$30,000 to \$90,000 would stay the same, presumably.

**Ms Townson:** More or less the same. There would be slight increases, ranging between \$20 and \$130 a year.

**Mr Carr:** But that would include keeping the last budget’s—and I call it a “massive surtax” because it is. It’s a surtax on anybody making \$53,000. That would keep that in there then.

**Ms Townson:** No.

**Mr Carr:** That would be withdrawn?

**Ms Townson:** In recommending a new structure for the income tax, we eliminated all the surtaxes and put it all together so that in this system, if it were adopted, there wouldn’t be any surtaxes. There would be simply a more progressive income tax with more brackets and different rates on each bracket.

**Mr Carr:** But to keep the amount of revenue neutral, I assume, even if you didn’t call it a surtax, that last budget where people got hit with a surtax, that would still

be in there for my average Ford worker. When you say he’s not paying more, he wouldn’t pay any more than he’s paying now, but he would be paying more than he did before September 1990, if you follow my drift.

**Ms Townson:** Yes, I understand. As I said earlier, this whole budget is revenue-neutral. Some people will find themselves paying less in property taxes and more in income taxes, but overall, the burden is not going to change that much for those in the middle group.

**Mr Carr:** But as you know, there was a major problem in the last budget because it was made retroactive. People are very upset about that surtax. Just so I’m very clear, the way you’ve structured it with your report, those people would not pay any more, but they certainly wouldn’t go back to where they were prior to the last budget in May of last year.

**Ms Townson:** You’re talking about the 1990 budget that implemented changes for 1993?

**Mr Carr:** Yes.

**Ms Townson:** I can’t remember offhand, and I would have to look through here, whether we took that into account or whether we were basing it on pre-budget. But what we’re doing is we’re not talking about any surtaxes here; we’re talking about a new system for income taxes.

**Mr Carr:** But you know what the average person is saying? Whether you call it a surtax or whether my rate’s higher, that’s what they’re concerned about.

**Ms Townson:** Yes, exactly, which is why we’re saying we don’t want surtaxes. We just want a simplified income tax structure. Incidentally, by the way, that is not going to be possible unless there is negotiation between the provincial government and the federal government that would allow Ontario to structure its tax rate in that way, and that would have to happen first.

**Mr Carr:** I won’t belabour the point, but I’m thinking again of the average Oakville worker saying, “We’re going to be revenue-neutral, but you’ve already hit me, you’ve already increased me massively.” I don’t expect you to comment on that because some of it’s political.

You admit you’ve got to have the federal government involved in it. As you know, this government’s mandate is winding down. The Premier’s already said it will be spring of next year. Do you see, by the time this government leaves, any of those things you talked about being implemented in conjunction with the federal government, or won’t we see it in the life of this government?

**Ms Townson:** No, I do see them being implemented, and there are a number of reasons for that. First of all, this is not something that’s just up to Ontario. As you may know, the federal government did issue a discussion paper in 1991, I think it was, where it suggested renegotiating the tax collection agreements to allow the provinces more flexibility to set their own parameters in their income tax systems. That paper was put out there specifically because provinces requested it. Provinces felt they didn’t have any say in the basic parameters of the income tax system. So that was already put on the table by the federal government.

What we’re suggesting is that Ontario pursue that option which was offered by the federal government; that



instead of imposing a tax which is a percentage of the tax imposed by the federal government, it might impose tax directly on income, which is what the federal government suggested in that paper.

So this is not something to do with this particular government in Ontario; it's something that was put out there by the previous federal government, incidentally, at the request of provinces that had lobbied that government. I would expect that those negotiations would be ongoing, because I think a lot of provinces, not just Ontario, would like to see changes made in those agreements.

**The Chair:** Mr Carr, your 15 minutes are up.

**Mr Carr:** Gee, time flies when you're having fun.

**Mr Sutherland:** Ms Townson, I want to thank you for doing a very comprehensive and a very good job with the report. I by no means consider myself a tax expert, but even some of the assumptions I had about taxation issues—you supported some of them and you destroyed some of my assumptions too, and I think the value of your report will last because it does exactly that. A lot of the discussion about taxation issues by politicians and a lot of people, has been done in a bit of a vacuum, and I don't think we're doing this with the Fair Tax Commission now. I think people can have a more intelligent conversation about what the impacts are of different types of tax alternatives. So I compliment you and the commission for a job well done on that aspect. From the standpoint of the public overall and all of us who have to make decisions being more educated, I think the commission succeeds on that front.

We've heard here before the committee, and we ask people to comment, the commission made a recommendation about carbon taxes. We've certainly heard from economists, from other groups, that if carbon taxes are going to be implemented, at the minimum they should be implemented at a national level. I'm wondering what your comments would be regarding that aspect.

**Ms Townson:** I can certainly see the argument for doing that, but we did consider that and we think that there is room for Ontario to act to supplement its own requirements in the area of environmental policies with a carbon tax. We recommended that it be set at a relatively modest level—I think we said \$25 a tonne, as I recall—and we also suggested that if this were implemented, then a comparable reduction in other business taxes should be made so that it wouldn't penalize business. Nevertheless, we felt it was something that Ontario could do, where it could take action to supplement its own environmental policies in this way.

**Mr Sutherland:** This issue isn't directly related to the province, but you made some comments about RRSP limits and what they should be. There's been a lot of debate going on with the federal government and its public pre-budget consultations regarding this issue. I'm just wondering. Did the commission do any research to indicate what amount of people using RRSPs are using the actual maximum allowable amount?

**Ms Townson:** We didn't; we looked at who is using RRSPs. Incidentally, it's important to make the point that

we weren't just referring to limits on RRSPs. We were talking about registered pension plans as well, because some of the media coverage of this has been misleading. We did not just recommend restricting contributions to RRSPs; we looked at the whole area of tax assistance to private retirement savings.

What we did look at was the number of people who are contributing to RRSPs—and there's some information about that in our report—and who belong to registered pension plans. Less than half the work force belongs to registered pension plans, and the most recent information I've been looking at for a research project I'm working on myself indicates that the coverage has gone even lower than that, and it's about 20% or 25%, perhaps even less than that, as I recall, who contribute to RRSPs.

There has been some research from Statistics Canada recently that indicates not everybody is using it to the maximum at this point. I would suspect that's probably because of the state of the economy, that people can't afford to make their maximum contributions at this time.

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**Mr Sutherland:** We've also had a lot of discussion—obviously one of the things all members of this committee are concerned about is unemployment rates—through the presentations about payroll taxes. I know your mandate wasn't necessarily to look at their impact on employment, but we've certainly heard from many presenters that payroll taxes are too high. They're not, for lack of a better term, a progressive tax, because they're not based on the amount of income they actually earn. Yet we know that corporations are also able to transfer funds much easier out of Ontario or out of the country.

I'm wondering if you had any comments in terms of whether there's a better mix of corporate taxation that could be done than what's there now. Is there too much in payroll? Is that hurting employment? If we went to other forms based more on income, would that be revenue-neutral or would we end up losing more? Did the commission look at what impact this might have on employment and companies hiring more?

**Ms Townson:** First of all, it's important to make the point that our research indicates, and most economists would agree with this, that it's not corporations that bear the burden of payroll taxes; it's workers. We have a discussion of this in the report, actually, that shows that while it may be difficult for a company to adjust to payroll taxes in the initial stages, over the long run it may adjust to that by reducing wages or by not hiring as many people. In fact, we recognize in the report, and make comments about this, that we do not want to recommend increases in payroll taxes because of the impact on employment and on workers.

In fact, there were some people who were suggesting that if we took away some of the business taxes at the local level, for example business occupancy tax or commercial-industrial property tax, that could be put on to payroll taxes. We rejected that suggestion because of the very point that you're making, because payroll taxes affect employment, and we didn't think that was appropriate at this point in time.



**Mr Jim Wiseman (Durham West):** This is a question about how to tax in terms of business and how to use taxing in order to encourage businesses. I haven't had a chance to get through the entire document, so forgive me if it's in there. The question about taxing—and we've heard a lot about it. For example, at the municipal level there are taxes where they pay by the square foot but there are also taxes that are non-taxes; for example, site plan approvals and the control that municipalities have over those kinds of costs.

Have you given any thought to how the tax system could be restructured to encourage business development by rejigging, removing and realigning the way money is extracted from the business community now?

**Ms Townson:** We did look at some of that but perhaps in a limited sense. The examples you gave were not ones that we looked at specifically, but we did consider, for example, whether business should be encouraged to do training through some kind of mechanism in the tax system, let's say a training credit or whatever. We decided against that for what we thought were very valid reasons, because the way you could structure that kind of credit would only really help those businesses which paid for outside training. Since many businesses do training in-house, we didn't see how a tax credit could encourage them to do that kind of training, which is deductible in any case.

We also looked at things like incentives. As you know, the tax system has incentives for business to write off investments in plant and equipment. Given that the direction of the economy and the analysis of the future of the economy is much more focused on human resource development, that was one of the reasons we were looking at whether you could do something in the tax system to encourage business in that kind of investment, which in the future some people suggest may be even more important than investing in factories or equipment or whatever. That's why we're looking at this idea of perhaps some incentive for training. But as I said, we decided against that.

We have some guidelines in there on tax expenditures for corporations—that is, incentives you give through the tax system for corporations—and we've set out some principles for that which say among other things that you should look at what your objective is to give this kind of incentive to corporations, and that there also should be some kind of ongoing monitoring to see whether your objective was met if you decided to do this through the tax system.

The majority of commissioners was not in favour of a minimum corporate tax, as you probably know, and the problem of some profitable corporations not paying any tax we felt should be addressed by reducing the number of tax expenditures for corporations rather than imposing a minimum corporate tax.

Overall, the direction was not in favour of increasing incentives for corporations in the tax system but suggesting that where you do give those kinds of incentives they should have clear objectives and they should be monitored to see that the objectives were met.

**Mr Wiseman:** As a taxpayer there are two things I

have as a major bone of contention. First is urban sprawl and the fact that the infrastructure that is necessary to maintain the new greenfield developments comes back as tax increases to the rest of the community to pay for that. The second is, particularly in my constituency they're building a water treatment plant, but that water treatment plant is for industrial, commercial and residential expansion and yet everybody is going to pay for it. It's causing taxes to go up.

There are really two questions there. In the first scenario, did you happen to have a chance to look at what the sustainable size of the lots is in terms of the new subdivisions paying for themselves in terms of delivery of service, without having to raise everybody's taxes to subsidize?

**Ms Townson:** That's the kind of technical question that I don't think I'm in a position to answer. That may have been something that the property tax working group looked at. I personally can't give you the answer to that. They gave a very comprehensive report.

I can say that what we looked at in terms of local taxes was that if you removed education funding from the property taxes, then property taxes would become much more closely related to a tax for the services you get in your municipality, which is why we are suggesting also that the education portion of the commercial-industrial property tax be imposed at the provincial level rather than at the local level. So what you're left with at the local level, if these reforms were implemented, would be a much lower rate of taxes that would be much more closely related to the services that corporations and others get from the municipality. We also suggested that where it's possible to measure those services, like water, sewage, garbage pickup and so on, they might be funded through user fees rather than through municipal taxes.

**Mr Sutherland:** I get the sense from your overall recommendations on changes to the property tax, taking the education portion on, your comments about how to redo assessment and whatever, how that plays out for some people, that if I'm a small business person, depending on where I am, initially I may get some increase, I may get some decrease, but over the long run I'll have more stability in terms of what my property taxes are going to be. I won't get the wide variation from a reassessment or that type of thing. Is that a fair comment to make?

**Ms Townson:** It probably is, yes, because what would achieve that result would be the change in the assessment system, which is a totally chaotic system. It isn't even a system, as we say in the report there. Certainly, our experience in hearing from people at the hearings, both individuals and businesses, was: "There is absolutely no way we understand this system. It doesn't make any sense whatsoever."

The commission felt strongly that this is a major area that has to be addressed, and soon. I think if that were changed there would be more stability both for businesses and for residential taxpayers because it would be much clearer what the system was. There would be a system, first of all. It would be more understandable, it would be clear, it would be logical, and that, I think, would have



the result you're talking about.

**Mr Sutherland:** So then really all you'd be left with is whatever the municipality or whatever decided to do with that tax rate. That is what you'd need to worry about rather than all these reassessments that may come about.

**Ms Townson:** Yes.

1720

**Mr Phillips:** One big thing we're interested in on the committee is the underground economy. I wonder what conclusions you reached from your work on that.

**Ms Townson:** We debated, actually, at the commission as to whether we could get into extensive studies of the underground economy. There were some commissioners, frankly, who would like to have done that. What we felt was that a lot of that resulted probably from the GST, and we did not have access to the information at the federal level to do the kinds of studies that would have given us information.

Also, of course, by definition, since it's an underground economy it's very difficult to get at who's avoiding taxes by channelling work through the underground economy, whether that's GST on services or products or whether it's income taxes from not declaring income.

We eventually decided not to go into that area in any depth. We might have done so, but we didn't.

**Mr Phillips:** That's the problem, probably. What we seem to see happening here is that it's a large, growing issue that seems to be extremely important. If the commission said, "Listen, that's something we're going to have to ignore," then we may not be dealing with an environment that's central to taxation.

**Ms Townson:** I'm not suggesting we said we'll ignore it altogether. I'm suggesting that we decided not to do any detailed specific research on it. We do have a section in the report, as you know, on administration and compliance and audits and stuff like that, and how you get people to comply with taxes, so we have looked at that.

My understanding is that one of the problems with the underground economy, among other things, is the question of adequate enforcement mechanisms and compliance and so on, so we do have comments in the report on that.

**Mr Phillips:** We see a move to permitting more incorporation of individuals as small businesses: doctors, for example. What's the Fair Tax Commission's view on that, where individuals will be allowed to incorporate and I presume use the small business tax rate?

**Ms Townson:** I don't think we expressed any particular comments on that specific issue, as I recall.

**Mr Phillips:** Did you ever look at the incorporation of individuals as small businesses?

**Ms Townson:** We looked at it from the point of view of self-employment, of things like the imposition of the employer health tax on the self-employed individuals and those kinds of things. But from the specific point of view you're asking about, the trend to incorporation and so on, as I recall, we didn't make any comment on that.

**Mr Phillips:** I think lawyers and doctors, among others, are going to incorporate and they're relatively

substantial numbers. What would be the tax impact if one incorporates? What is the tax saving available?

**Ms Townson:** I can't answer that question.

**Mr Phillips:** I gather the commission's all wound up. You at one time had a computer-based infrastructure and what not, and that's all now just wound up?

**Ms Townson:** A computer-based infrastructure; what do you mean?

**Mr Phillips:** Didn't you have kind of a network of people around the province who were working on—

**Ms Townson:** Oh, that was part of the public consultation process which actually wound up before the commission did. As I mentioned at the beginning, we had animators working in a number of communities across the province with established groups in those communities. Those groups met and talked about taxes and formed tax forces, so those people are kept in touch with each other through a computer network. That may be what you're referring to.

**Mr Phillips:** Yes.

**Ms Townson:** That was just while that process was going on. I can't remember exactly when that ended but it was prior to the public hearings.

The commission itself is over, as you know. We ceased to exist as of December 31, so it no longer has an office or a staff or anything. All the records and the follow-up is being done by the ministry.

**Mr Phillips:** The corporate minimum tax you've talked about. I think your focus would be more on if the tax expenditures aren't right, to get rid of them, as opposed to the introduction of a minimum corporate tax.

**Ms Townson:** Right.

**Mr Phillips:** The proposal on a different way of assessment, I would assume you've done some modelling on that, taken some jurisdictions and said, "Here's how it does work." I gather there are other jurisdictions around the world that use similar models. It would be helpful for us to know what other jurisdictions use that. I think your recommendation is, "Let's get away from market value assessment and move to this system." Where is this system working now? In what communities did you do a little bit of modelling to make sure this is a model that works?

**Ms Townson:** There again I'm not sure I can answer your question specifically. We have a number of research projects in that area and we did look at other areas where they had the unit value system that we're talking about. Some of the more detailed research, some of which was done by John Bossons, Enid Slack and those other people, is going to be published as research studies by U of T Press, so there will be some more information there.

**Mr Phillips:** Where are they using that unit value? What jurisdictions do they use it in?

**Ms Townson:** I can't tell you that offhand. I would have to look through here and try to find it, but there are some, as I recall. I'm sorry. Some of these technical questions are a little difficult for me to answer.

**Mr Phillips:** I thought a cornerstone of the recom-

mendations was that property tax reform was the big thing, getting rid of market value assessment and moving to your new unit value. I would have assumed that the commission had some level of assurance that this is a system that works.

**Ms Townson:** Yes, we did, but I can't recall off the top of my head where the other places are that have it. We have a discussion of it in here and there'll be more detailed discussion of it in the research studies which were the input to that section in the report.

**Mr Phillips:** It would be helpful if you could let me know, if you have the time.

**Ms Townson:** I can get somebody to give you that information. I'll make that commitment, to do that.

**Mr Sutherland:** I think it would be helpful if all the committee had it, so if it's made to the committee, that will be fine.

**Mr Phillips:** Yes, because that's the cornerstone.

**Ms Townson:** I'm sure one of the people there who was an expert in this area can probably give you more of that information. I'll make a note of that.

**The Chair:** If you could forward that information to the clerk of the committee, the clerk will ensure that we all get copies of that.

**Mr Phillips:** I know my experience is that everybody thinks whatever they're paying is unfair until they see the next proposal.

Your recommendation on essentially replacing the residential portion with income tax: One of the things we seem to be seeing is that there is some resistance maybe because of the informal/underground economy among other things, to looking for a lot more revenue from income tax. But I gather the Fair Tax Commission concluded you could take a 20% or 25% increase in provincial income tax and actually deliver that.

**Ms Townson:** I think it's important to emphasize that this is not just an isolated increase in income taxes; it's also a reduction in property taxes. It seems to me some people have lost sight of the connection between the two things. For an individual who is paying heavy property taxes, when education funding is switched from property taxes to income taxes, that individual may not be paying any more than now, but he'll be paying it through income taxes instead of through property taxes. That's the key point that has to be borne in mind. My impression from some of the coverage that our report received was that people focused on the increases in income taxes and forgot that there were compensating reductions in property taxes. It's important to keep that in mind.

**Mr Phillips:** I actually found the reverse, that they focused on the reduction in property taxes, internalizing that in the end somebody's going to pick it up.

**Ms Townson:** Somebody's got to pay for it, yes.

**Mr Phillips:** Did you do any kind of modelling of where there may be some substantive changes geographically in taxes paid? I know the city of Toronto felt your recommendations would help the business sector here.

**Ms Townson:** Again, that's a question I can't answer off the top of my head, but I believe there is some modelling such as that in the background studies we commissioned for this. Maybe what I could do, along with giving you the stuff on unit value, is indicate to you what background studies would be relevant to address your question and when they might be available. In fact, they may even be available already.

**Mr Phillips:** Good. I was pleased to see you came in under budget for the thing, I think.

**Ms Townson:** And on time.

**Mr Phillips:** Yes. It was roughly a \$9-million exercise, I gather.

**Ms Townson:** We were cut back, as you know, in the middle of our activities, which was hard to adjust to; nevertheless everybody had the same problem. I think it was going to be \$8.6 million and then it was reduced by another \$400,000 or something. I forget. The total amount was less than \$9 million anyway.

**Mr Phillips:** As I say, I was pleased to see it.

**Mr Crozier:** Just so nobody shoots me, please answer this one quickly. It's one of logistics, just for my own information. Let's say for all intents and purposes that 50% of our property tax is education. I'm a tenant. I pay \$1,000 a month; \$500 of that is going to be taken off. Did you give any thought to how that would be handled in light of rent control and that sort of thing?

**Ms Townson:** We talked about tenants and how the government should make sure that the savings were passed on to them. We didn't specifically say that it be done through the Rent Control Act or through some other act, but we did include in our recommendation that there should be some mechanism for ensuring that those savings were passed on to tenants.

Also, we heard from a number of tenants' groups who felt that tenants often were not aware that they were paying property taxes through their rent and who wanted some formalized way of notifying them what part of their rent went to property taxes, so we made some recommendations on that as well.

**The Chair:** Thank you, Ms Townson, for making yourself available to the committee this afternoon to answer questions with regard to the Fair Tax Commission.

We stand adjourned until 10 am tomorrow.

The committee adjourned at 1732.





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Comité permanent des finances  
et des affaires économiques

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## STANDING COMMITTEE ON FINANCE AND ECONOMIC AFFAIRS

Tuesday 1 February 1994

The committee met at 1005 in the St Clair/Thames/Erie Rooms, Macdonald Block, Toronto.

## PRE-BUDGET CONSULTATIONS

ONTARIO PUBLIC SCHOOL  
TEACHERS' FEDERATION

**The Chair (Mr Paul R. Johnson):** The first presentation this morning is by the Ontario Public School Teachers' Federation. Please identify yourselves for the purposes of Hansard and for the committee members.

**Mr Reg Ferland:** Thank you. To my right is Vivian McCaffrey, our legislative observer at OPSTF, and to my left is David Lennox, our general secretary at OPSTF. I'm Reg Ferland, the first vice-president of the Ontario Public School Teachers' Federation.

We, as OPSTF, represent 32,000 members ranging from statutory members teaching full-time in the elementary schools under the public system, representing occasional teachers and educational support personnel also in elementary schools under the public system.

We thank you for the opportunity of exchanging comments and thoughts with you this morning. We believe that these hearings are the appropriate vehicle to express our concerns on behalf of our members.

I am under the impression that you have copies of our brief and I would like to more particularly this morning talk about the recommendations that you will find attached at the back of the document on page 14.

OPSTF has identified three long-term issues for education finance reform: restructuring the tax system so that the major share of education costs is paid from provincial revenues rather than from property tax; ensuring that the ceilings for per-pupil expenditures more accurately reflect the real cost of providing basic services for elementary school students and secondary school students; and providing greater investments in our elementary education system.

These issues, as you are very much aware, are being currently addressed by the Fair Tax Commission, the review of education finance by the Ministry of Education and Training and the Royal Commission on Learning. We do not anticipate that the 1994 budget will deal with any of these issues in a substantive way.

Regarding budget options, OPSTF recognizes the pressure on the provincial revenues and the limited options for setting the upcoming provincial budget. You have three options, in our opinion: raising taxes, cutting expenditures and increasing the deficit. Further cuts to social services spending would result in long-term problems in the quality and level of service in education in Ontario.

Hence our first recommendation: That the 1994 provincial budget avoid cuts to public services and limit tax changes to closing loopholes and making the personal income tax scheme more progressive.

Regarding the educational sector, investment in elementary and secondary education is a long-term one. A highly educated and trained workforce is essential for economic recovery and long-term ability to compete on a global level.

High education levels result in lower expenditures on health services, unemployment and social services as well as reduced costs for correctional services. High education levels are also linked to higher salary levels and greater rates of individual tax contributions.

Public opinion polls strongly support increased spending on education. School boards recently have had their transfer payments cut and have had to absorb further cuts under the expenditure control program as well as the social contract.

Initial program cuts at the elementary level include delaying the implementation of JK, reducing FSL or ESL grants, French immersion, music, art, design and tech, family studies and summer school programs.

Therefore our second recommendation: That the provincial government not further reduce transfer payments to its local transfer partners.

Regarding capital funding, school boards require increased capital funding to accommodate enrolment growth, especially at the elementary level, the expanded JK program and the demand for school-based child care.

Ontario has the highest percentage of schools built before 1950. That's exceeded only by Quebec in the number of schools that were built in the period of 1950 to 1960. Boards require significant funding for renovations to bring schools up to health and safety standards, and to meet modern standards of energy efficiency.

The report commissioned by the Ontario Association of School Business Officials concludes that Ontario schools could reduce their energy costs by \$59 million annually and incur comparable further savings throughout subsequent operational savings.

Hence our third recommendation: That the capital allocation to school boards be increased to more accurately reflect the demand for new pupil spaces and the need for building upgrading.

On the issue of adult education, OPSTF has concerns that school boards are not being treated as full training partners within the structure of the Ontario Training and Adjustment Board.

OPSTF believes that the move under the expenditure control plan to cut funding by about 40% to adult literacy programs was shortsighted. It affects those who without that assistance will remain on the unemployment roster and welfare rolls of this province.

Therefore our fourth recommendation: That school boards be recognized as full partners within the Ontario Training and Adjustment Board. Also including our fifth recommendation: That the provincial funding for adult

literacy programs be restored to previous levels.

On the issue of child care, OPSTF supports the provincial government's plan to reform the funding of child care and we are anxiously awaiting its announcement on this initiative.

OPSTF believes that the government should deal with the current shortage of subsidized child care spaces by easing the access criteria to the child care subsidies under the Jobs Ontario program.

There will never be a comprehensive child care system without a national child care program. A recent national poll indicated that 63% of Ontarians support a national child care program.

Therefore our sixth recommendation: That the criteria for subsidized child care spaces under the Jobs Ontario fund be eased to reduce the waiting list for general subsidized spaces.

Our seventh recommendation on that issue: That the government take the lead in promoting the establishment of a national child care program.

On the issue of social contract, the social contract represents an unprecedented intrusion into the free collective bargaining process. It is creating inequities between sectors and within bargaining units. Ministry of Labour data indicate that public sector employees are shouldering an unfair burden of provincial expenditure controls.

In the education sector, younger teachers will be more adversely affected than their older colleagues because they are denied grid placements.

Some school boards are taking the social contract as a signal to strip collective agreements. Contract stripping doesn't just affect teachers; it affects the students they teach through class size, pupil-teacher ratio and preparation time, and also affects the broader community at large.

Therefore our eight and ninth recommendations deal with the social contract: That the Social Contract Act be amended to provide for the reinstatement of increments to salary grids; and that, for the term of the Social Contract Act, the School Boards and Teachers Collective Negotiations Act be amended to allow for the extension of existing collective agreements and for the suspension of the ability of school boards to amend the collective agreement 60 days following the release of a fact-finder's report.

On the issue of Fair Tax Commission proposals, OPSTF is not currently in a position to fully respond to the recommendations. We do want to take the opportunity to express our opposition to the recommendations, particularly the one dealing with the removal of property tax as a source of funding for elementary and secondary education.

We do support paying the major portion of total per-pupil expenditure from provincial revenues rather than property tax, but no support from property tax would place the role of school boards in jeopardy. School boards perform a valuable role in responding to local needs and in providing accountability for tax expenditures.

Hence our tenth and eleventh recommendations: That the government not eliminate property tax as a source of support for elementary and secondary education; and that education finance be reformed so that the major share of elementary and secondary school per-pupil expenditures is paid from general provincial revenues rather than from property taxes.

This concludes the OPSTF formal presentation. We would be glad to entertain questions at this time.

**Mr Gerry Phillips (Scarborough-Agincourt):** I appreciate the presentation. I guess a fundamental recommendation is that the funding from the province for this fiscal year—that's our basic role here—should remain the same. Is that your recommendation?

**Mr Ferland:** Yes.

**Mr Phillips:** I gather then the expectation is that the property tax portion remains the same, so that you're calling for essentially holding the line or for a freeze in the spending for next year, for 1994-95. Is that a fair assessment?

**Mr Ferland:** It is.

**Mr Phillips:** Okay. That's useful.

**Mr Ferland:** My colleague would like to elaborate on that particular answer.

**Mr David Lennox:** The answer our first vice-president has given you is absolutely correct. The shock waves that are going through the school systems right now through the expenditure control and through the social contract have anxiety levels higher than I've ever seen them. I think if they have one more surprise from this government, it's going to be one surprise too many.

**Mr Phillips:** The recommendation on the Ontario Training and Adjustment Board is interesting. I have major reservations about the way that has been established in that I think it kind of gets right in the road of continuous learning and of what I think we were all working towards, which was a seamless system where lifelong learning goes on. We've set up a body that, in my opinion, does not have the public input that I would have hoped.

So far I have heard very little out of the Ontario Training and Adjustment Board. I would think they'll have some good announcements shortly. How close is your organization to that and how well is it functioning so far, in your view?

**Mr Lennox:** If I may speak to that issue, we're not close enough to the issue. Education has one representative here provincially. With regard to the definition of LTABs, the local training and adjustment boards that are now in their formation stage, we're not going to have as much say on those boards as education should, be it from school board administration, school board trustees or teachers. What we're concerned about is that the role that education should and must play to make that successful in a seamless, lifelong learning experience will have a fairly significant breach in it.

They're still sorting out whether or not there are going to be 22 or 25 local training and adjustment boards in the province of Ontario, and while we don't wish to see 50



or 100 of them, some of the geographic areas certainly give cause for concern. When you consider them from down in the Ottawa-Carleton area up to the top of Renfrew and then coming this way, you get into some fairly significant areas where you can lose an awful lot of money that is aimed at a good cause. But if it's not done through some organized fashion in a local area, for example, the Renfrew county board or the Renfrew Roman Catholic board, then you're going to see that money not used effectively.

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**Mr Phillips:** I was interested in your comments on capital, because the province has completely changed the way it provides for school capital, as you probably know, to what they call "loan-based financing," which means the school boards go and borrow the money shown on their books as debt, but the province has 100% of the obligation to repay it.

It's a way, in my opinion, of moving, in school boards' cases, \$330 million on to the school boards' books, but anybody would look at it and say that really is provincial debt because the province owes 100% of the principal and interest. It's a transparent game that I think most of the financial markets see through, but it allows people to keep spending without having to report it. Do you have any comments on the loan-based financing, or is it completely irrelevant to you people?

**Mr Lennox:** I like your last comment. I think it's irrelevant to us. We sit there and we know that we have to have capital for both new structures and, more important right now, for the renovation stage.

Creative bookkeeping, we understood it when it came out, it was a matter of shuffling. It'll come back to haunt the Ontario government in future years. The problem is, the further you get into it, whenever some government decides it wants to put it back in its rightful place, it's going to be a terrible burden to try to move back.

**Mr Phillips:** I have the same concern, frankly, on the pensions. Maybe the group is already aware that the government has 100% of the responsibility for the unfunded liability in the teachers' pension, as everyone acknowledges, but they're taking a three-and-a-half-year holiday from making any payments against that.

In my opinion, that will run that unfunded liability up from \$7.2 billion, probably going up \$500 million a year. Then when that three-and-a-half-year holiday is over, there's a brand-new expenditure of \$500 million a year that suddenly clicks back in. Does the teachers' group have any concerns about the way that's being reported and managed?

**Mr Lennox:** We have concerns. The government had two options with that money. One was to reduce the unfunded liability over the 40-year period. The alternative was the way they chose to do it. Yes, we have some concerns. We recognize that the Minister of Finance saw it as being an immediate need, so it was a short-term solution to it.

I think I'm going to have to wait until I see the next actuarial study of the pension fund to ascertain how much of a problem it's going to be. I've heard about four

different variations on it right now and I don't know which one of those variations I'm prepared to accept.

**Mr Norman W. Sterling (Carleton):** I see there's no recommendation in here on how we can cut back in terms of costs. In the area I represent, Ottawa-Carleton, we have recently had a commission by Brian Bourns, who initially, in his interim report, recommended the amalgamation of some of the school boards. There's a lot of talk now about the restructuring of school boards, and we have a commission going across our province to talk about it. Have you got any ideas about restructuring or governance questions?

**Mr Ferland:** Yes. I believe we alluded to that particular concept at the beginning of our presentation, that we have three bodies currently examining the restructuring of education; in some aspect also perhaps the refinancing of education.

We did not make any comments about these particular items that are presently being examined, such as the restructuring or amalgamation of school boards and that whole concept. We do have opinions, we have concerns about the restructuring process and the amalgamation process. We are not opposed to the concept of restructuring and amalgamation.

We met as recently as last Saturday with the Minister of Education and Training, talking about that very issue, and we do want to continue to be part of the input process and the consultative process that is going to happen. We've not addressed any of that in this present tense, because we know that any financing this year will be stopgap until such recommendations are brought forward and dealt with.

**Mr Sterling:** What do you think of Ralph Klein's idea of going to province-wide bargaining for teachers?

**Mr Ferland:** We are not for province-wide bargaining. To get into that particular debate at this point in time would be a very lengthy one. It has deep-rooted historical perspectives from the collective bargaining aspect of it.

**Mr Gary Carr (Oakville South):** I have a quick question.

**Mr Lennox:** Mr Carr, may I just intrude on that?

**Mr Carr:** Sure.

**Mr Lennox:** You've got some really fundamental problems with Mr Klein's approach to this. It's the same thing as his cutting back his 160 school boards out there. There are a significant number of those school boards that are absolutely empty boards. They don't have 160 boards out there. What they've got is all the designations, but some have closed up years and years ago.

With regard to the province-wide collective bargaining, no, we don't support it. We see a connection between the employer and the employee at the school board level and we also see that you've got a fundamental problem with provincial bargaining, that is, who has the resources to pay?

As long as you've got the majority of the resources coming from property tax, then you've got a problem turning province-wide bargaining into any realistic solution. The social contract just bears that out. That was,

in effect, an attempt at province-wide bargaining—no, not bargaining; province-wide contract stripping would be more appropriate. But that's your first attempt at it.

**Mr Carr:** My question relates to your first recommendation. As you know, the most recent poll I saw, which I think was in the *Toronto Star*—I don't know if we have a representative from the *Star* here—said that 62% of the people want public service cuts and the percentage, I think, if memory serves me right, was only about 10% wanting tax increases.

The problem you've got there is, when you talk about progressive taxes, unfortunately politicians of all political stripes seem to hit the middle class. The people who can afford it, the rich, seem to be able to move their money. How come you can be so out of touch in your first recommendation when the people of this province are not saying what you're saying, "Increase taxes and don't have more provincial service cuts"? What I've been hearing and what the poll in the *Toronto Star* as recently as two weeks ago was saying is, how can you be so out of touch with the public in the province of Ontario?

**Mr Ferland:** I'll ask Vivian to respond to that.

**Ms Vivian McCaffrey:** We actually make reference in our brief to public support for spending on education and we relied on work that's been done by Doug Hart and D.W. Livingstone at OISE who do the annual OISE polls. They've done a survey of the literature on polls and an extensive survey of polls. Their article came out in the fall of 1993, so just a few weeks ago.

It depends, of course, on the questions you ask, but yes, people do say they want to see cutbacks in government spending. But when they pursue that question, the cuts they want are not public services but in things like—they mention subsidies to crown corporations, social benefits for the wealthy, defence spending; it's not cuts to education services, social services and that kind of thing.

I don't think you can lump the concept of cutting expenditures and extending that position to cutting social services. I think there are also very good public opinion data to argue against that.

**Mrs Irene Mathyssen (Middlesex):** On page 9 you talked about support for a national child care system. I think that's very important. Unfortunately, under the free trade agreement and NAFTA, that's no longer possible because of the amount of money that would have to be paid out to the private sector for that to happen. Despite the fact that Mr Chrétien signed that, do you think that we in Ontario should challenge NAFTA?

**Mr Ferland:** Our resident expert on child care is Vivian, so I'll ask her to respond to that as well please.

**Ms McCaffrey:** I understand there are concerns about the implication of NAFTA not just on child care but on the delivery of public services in general, but I don't think the experts in the child care field have actually accepted that it's a dead issue. We're talking about a non-profit system across the country. That's what a national program would entail.

The main obstacle as I understand it isn't NAFTA, but agreement of the other provinces. That's why we think

Ontario, which has the best record on child care—the current government has made some significant improvements in the delivery of child care.

1030

We think it's incumbent on the Ontario government to really push at the federal level and that any problems with NAFTA will have to be dealt with down the line, but NAFTA's an agreement that can be changed like other things. If it looks like NAFTA's a problem, then that would have to be dealt with. But we're a long way down the line to putting a national child care program in place before we have to deal with the kinds of issues that I think NAFTA would present.

**Mrs Mathyssen:** I hope you're right. My next question, on page 11, the concern over the 60-day rule: I understand that and yet I wonder, has this ever happened in Ontario where a board has unilaterally altered a collective agreement after 60 days? It would seem that it would be more likely that you'd have a ruling of jeopardy before that period, but has there been a time?

**Mr Ferland:** If I may make an attempt to answer that. I'm not sure that your last word, "jeopardy"—

**Mrs Mathyssen:** When the Education Relations Commission goes in and sends people back—

**Mr Ferland:** That's after some type of a sanction. The 60-day rule that we are making reference to here is one that is a time prior to a full sanction exercise by a school board and its employees. It's a time when the fact-finder's report has been made public, and 60 days after that point the school board unilaterally can go into a collective agreement and make contract strips, if you will.

We had two specific examples of that this fall with East Parry Sound and Windsor and both of them did result in strikes, full sanctions, withdrawal of services due exclusively to the 60-day rule that the board availed itself of. It is a very strong concern of ours that should that particular regulation, if you will, not be closed or the door to that particular regulation not be at least monitored very strongly with direction and perhaps full closure, then we're going to experience more of it throughout this province, the educational system of Ontario.

**Mrs Mathyssen:** My last question: OSSTF came in and recommended the time was now for confederated school boards. I wondered if you could comment on that.

**Mr Ferland:** Our affiliate ally through OTF, OSSTF certainly has taken that position. We at OPSTF have not at this point in time taken a position on confederated school boards. We have not fully studied it and I'm not prepared at this point in time to make any comments on it.

**Mr Kimble Sutherland (Oxford):** I'll say to you, as I've said to other groups, if we don't have any shock to our revenues, then hopefully there won't be any shock to the revenues of transfer partners. But I notice in your written presentation you ask for financial stability and of course, as you also noted, the government hasn't had financial stability in its revenues and that makes it very difficult.

The challenge that I'm grappling with in terms of education systems in general, you've certainly made a



strong case for keeping local school boards and the local autonomy. My sense out there in the education system is that in certain areas certain school boards do things very well.

I think in my area my local school board has done a good job in identifying its language components and is recognized as doing a good job. Another school board may do something else better. I guess it's just in terms of how we balance off local autonomy with the increasing demand for accountability and in provincial accountability; in other words, a greater degree of consistency from board to board.

Some sense would say that calls for a greater provincial role to ensure that you get that provincial consistency. How do we overcome that challenge of maintaining some local autonomy but getting a higher degree of provincial consistency across the province in what students are learning?

**Mr Lennox:** I'm not so sure that we want all that consistency. What we want to do is gather the data that reflect efficiency and good fiscal practice and that identify best practice so that other boards can use that best practice if it is fitting for that board.

I'll give you an example because, unfortunately, I sit at the sectoral task force on education and the situation there is we've now had several presentations of best practices throughout the province. One of the things we're finding out is that in a particular school board where they've taken, for example, transportation and they've taken the separate board and the public board and integrated their transportation, there were certain sections where it was costing them more money when they integrated them than when they didn't.

So the aspect is not to blindly go ahead with consistency, but to simply use all of our knowledge and past practice and best practices so that we can do things better, and we can do things a lot better. Just now, from warehousing to procurement to banking to transportation, just in those singular topics we can do a lot better.

**Mr Sutherland:** I was talking more the curriculum.

**The Chair:** I'm afraid we're going to have to stop now. I thank the Ontario Public School Teachers' Federation for its presentation.

#### COUNCIL OF ONTARIO CONSTRUCTION ASSOCIATIONS

**Mr Frank Bisson:** I'm Frank Bisson. I'm the chairman of our taxation and economic development committee. On my right, I have David Frame, the executive vice-president of COCA. On my left, I have Bill Empey, who is a partner in the ARA Consulting firm and has helped us prepare some of our paper today.

We had hoped to be able to show some overheads, but we have copies of the overheads that relate in among our papers so we won't be doing that.

We wanted to deal with the decline in construction activity, which between 1989 and 1993 has had a disastrous impact on Ontario's construction industry. Profits are low, unemployment remains high and bankruptcies continued near record levels, even in 1993.

While there are signs of improvement in the overall

economy, industry observers expect the construction industry to continue to struggle in the short term. A recent Ministry of Finance forecast projects a further almost 6% decline for non-residential activity in 1994 before experiencing what you can only term minuscule growth, about 1.2% in 1995.

To assure a timely recovery of the construction industry, the government must meet its commitment to policies aimed at building infrastructure and reducing unemployment. To achieve this goal, COCA proposes that the government add the new commitment of \$361 million to the baseline of \$3.9 billion in capital spending, as outlined in its 1992-93 budget plan.

The \$361 million I mentioned reflects Ontario's contribution in the first year of the recently signed two-year federal-provincial infrastructure agreement—and I think this next is important. As part of the agreement, COCA supports the federal government's call that contributions represent new money.

Documentation in the agreement states that the program is based on all governments using incremental funds to support infrastructure projects so that new or redirected dollars are used rather than existing or planned capital expenditures. Actually you'll find, if I could quote it directly, on page 3 of the news release that was issued by the federal and provincial governments that this has got to be new dollars.

Outlook for construction, current state: Unemployment rates, as shown in exhibit 1 that we have below, remained high through 1993, averaging 21.5% compared to 10.6% for the total economy. Construction's 1993 rate was only slightly less than its peak level of 22.7% in 1992. So we're at twice the national average.

It doesn't stop there. Levels of total employment continue to shrink. When you look at unemployment, that's only part of the picture. Between 1989 and 1993, construction employment declined by 76,000 persons as measured by unemployment. Over the same period the labour force decreased an additional 35,000 persons; people who left the industry, in other words.

We've got a total at that point of 111,000 reduction in the construction workforce. This decline in the labour force reflects discouraged workers leaving the construction sector for employment in other sectors, resulting in the loss of valuable skills and resources. We've got a little exhibit there showing that.

#### 1040

A more striking measure of the impact of the decline in construction activity is the loss of man-hours worked. This graph I think is very easy to read. It's quite striking if you look at it. Man-hours go from above four million man-hours to less than two million man-hours.

Our example: Hours worked by ICI carpenters and labourers, that's industrial-commercial-institutional carpenters and labourers, in the greater Toronto area have dropped by 75% between 1989 and 1993, with the 1993 estimates falling far below historic levels ever seen before.

Bankruptcies continue to plague the industry. Year-to-date measures for 1993, January to November, reveal



only slight declines compared to the record levels reported in 1992. That was over 700 bankruptcies.

**Construction expenditures:** The recession has had a devastating impact on the non-residential construction sector. Most segments hit peak levels of activity in 1989 or 1990, before entering into a free fall from 1991 to the present. Following peak levels in 1989, commercial and industrial activity declined by over 40% by 1992.

On the positive side, government projects have offered some stabilizing influence in recent years with institutional work, hospitals and educational institutions etc, and engineering work, roads, bridges and sewers. It's activity above that experienced in the late 1980s.

**Our industry outlook:** Ministry forecasts indicate a further decline for non-residential construction. We've got another exhibit for that showing very low activity.

The most recent projection taken from the 1993 Ontario Economic Outlook, issued in November 1993 by the Ministry of Finance, reports a 5.9% decline for non-residential construction in 1994 with only minuscule growth in 1995 of 1.2%. Limited growth is expected from the commercial and industrial segments, while infrastructure and institutional projects are expected to be the driving forces of recovery for construction in the short run.

**Going on to spending issues:** Fiscal planning should reflect the continuing recession in construction. Maximizing capital spending should be a priority. First of all, the uncertainty of a strong economic recovery in 1994-95 means that governments will be faced with tough decisions in the approaching fiscal year. The recently reported weaker-than-forecast recovery reflects a further decline in Ontario's revenues by \$1.6 billion in 1994-95, excluding the impact of a possible freeze in federal government transfers.

COCA recommends that revenue shortfalls must be made up by cuts in operating expenditures, not through capital expenditure reductions. COCA also recommends, in view of the economy's weak performance, that the government not increase taxes. Government should also recognize the role of a public-private sector partnership as a means of assisting government to meet its long-term goals of building infrastructure.

Under the recently signed two-year, \$2.1 billion infrastructure agreement, the federal and Ontario governments will each spend \$722 million on projects that are designed to deliver services to the public, like roads, bridges, sewers, waterworks and public buildings; the remaining \$656 million will come from participating municipalities.

COCA recommends that provincial commitments to the new federal-provincial-municipal infrastructure program reflect new capital money and that they not be a reallocation of previously announced provincial infrastructure programs. That's in line with the intent.

Spending by the three crown corporations must remain a priority for the government with increased emphasis on institutional spending, as shown in exhibit 7. Capital spending creates more benefits for Ontario than operating expenditures, as shown by exhibit 8. One billion dollars

of expenditures in capital spending would create 13,700 person-years of employment, compared to 10,100 person-years under operating expenditures. We also believe that provincial creditors would more readily fund capital projects compared to borrowing for current operating spending. Infrastructure assets are obviously more creditable than operating expenditures, which once spent are gone for ever.

COCA proposes that the government meet its original target of \$3.9 billion in capital expenditures, as outlined in its 1992 and 1993 budgets. Here we refer you to exhibit 9, where we try to look at actual expenditures versus budgeted expenditures and show the shortfall in spending that has occurred consistently since 1989. We want it to meet its original target of \$3.9 billion in capital expenditures as outlined in the 1992 and 1993 budgets, plus a 10% increase as a countercyclical measure, and add the new \$361-million commitment for the infrastructure program, for an overall capital budget of \$4.7 billion.

However, we express concern that actual spending will continue to fall short of announced plans. For example, the \$4.3-billion target announced in 1991 was never achieved. The 1992-93 capital expenditures of \$3.9 billion were reduced to \$3.6 billion. Finally, the 1993-94 projected direct capital expenditure of \$3.1 billion was revised to \$2.8 billion in the third quarter, according to Ontario Finances accounts on December 31, 1993. Minor revisions only were introduced to the crown corporations, raising them from \$800 million to \$807 million.

**Tax issues:** COCA continues to oppose the introduction of a corporate minimum tax, the CMT, as outlined in its 1993 submission to the Fair Tax Commission. COCA would like to draw the government's attention to the fact that the Fair Tax Commission itself also recommended against the CMT.

The proposed structure of the new CMT, based on adjusted book income, would oblige construction businesses to pay tax before profits have been realized as cash. I understand that this is an unfamiliar concept, but it's related to the way the Construction Lien Act operates. There is an unfair mismatching of cash flow with liabilities, and it's caused by the withholding provisions required under the Construction Lien Act. The federal corporate income tax act, and Ontario has accepted that, makes specific allowances for this problem, and it agrees with construction accounting in this area. COCA asks for the same treatment under the CMT.

COCA endorses the use of user fees to help finance public and private infrastructure programs.

Finally, we continue to oppose increased payroll taxes, whether they be WCB, workers' compensation, or the employer health tax. Escalating payroll taxes, as shown here in exhibit 10, are having a crippling effect on thousands of businesses. It doubled in the very recent past.

We finally emphasize that no new taxes be introduced to fund the new federal infrastructure program.

**Mr Sterling:** I was interested in the federal restructuring program. Basically what I found amusing about it is that we saw pictures of Art Eggleton on the front page of



various papers and smiling cabinet ministers shaking hands about this wonderful boon to our Ontario economy. Then I started to look at the figures.

We're going to receive \$720 million out of the federal government under this program, but the Ontario taxpayer is going to have to cough up \$866 million in taxes to pay back that \$720 million, because we pay back 43.3% of all of the federal revenue gained. So my view of a federal infrastructure program is that it's a net loss for Ontario taxpayers and that we'd be much better to go it on our own. Do you agree with that?

**Mr Frank Bisson:** I've never looked at it that way. That includes interest, is that what you're saying, that \$822 million?

**Mr Sterling:** Just the capital, and we'll have to pay back even more than \$866 million.

1050

**Mr Carr:** The Ontario taxpayers pay more to the federal government than we receive—

**Mr Sterling:** You see, we receive 36.1% of the program, we pay back 43.3% of the federal revenues. Therefore, every time we encourage the federal government to get involved in a program, guess who loses? The Ontario taxpayer. I find it amazing that this Premier on several occasions has gone to the federal government and said, "Hey"—

*Interjection.*

**Mr Carr:** You don't even know the figures, Irene, so don't you talk. Excuse me.

**Mr Sterling:** So every time we encourage the federal government to get involved in a program, guess who loses? The Ontario taxpayer. We're much better, in my view, to say, "Okay, if we need an infrastructure program, let's do it, let's tax for it or let's debt-finance it," because it doesn't matter whether the feds are going to do it or we're going to do it; at least we get an even break on this whole thing.

**Mr Frank Bisson:** Bill, would you like to respond?

**Mr Bill Empey:** I understand the phenomenon you're describing, but an equally valid reaction would be to simply ask the federal government to give a higher allocation to Ontario. Then Ontario gets what it deserves.

**Mr Sterling:** Absolutely. We're getting a raw deal from the Liberal federal government. We should be getting \$866 million.

**Mr Empey:** But our point here is that the money Ontario contributes for this to be useful should be new money. Our concern is that what the Ministry of Finance will do, as it has done so often in the past, is say that it's going to take up the federal offer and spend the \$700 million on capital. But what it'll wind up doing is a sleight of hand where it essentially transfers what it would otherwise have done in another capital project—in fact there have already been suggestions that this could happen. Ontario already is not getting the true benefit it needs from the federal program, and that would even add to that. The Ministry of Finance would complicate the problem by spending even less on capital.

**Mr Sterling:** I just think that us accepting \$720

million is a huge loss for Ontario and that other provinces are gaining.

**Mr Empey:** But I wouldn't describe it as a loss for Ontario. What I would say is that Ontario—

**Mr Sterling:** It's \$144 million.

**Mr Empey:** Ontario hasn't got its share from the federal government. Ontario deserves more.

**Mr Sterling:** Absolutely.

**Mr Empey:** But there's a benefit even out of the \$700 million that we're getting. The money's well spent. That's a difference in emphasis.

**Mr Sterling:** It would be wonderful if in fact there was a bank account there that had the federal contribution of \$2 billion and then they were handing it out. Then I couldn't use the argument. But the problem is there isn't any bank account, and guess who's going to have to ante up? You and I. We're going to have to ante up not \$720 million; we're going to have to ante up \$866 million.

I went over this argument with the Treasurer and he agrees with the rationale behind my figures.

**Mr Empey:** But again it's the question of the emphasis here.

**Mr Sterling:** Absolutely. Why didn't the province do this—

**Mr Empey:** I'm troubled that what your argument leaves is the sense that the capital spending itself is a losing proposition for Ontario, and in fact it's exactly the opposite. The capital spending is probably the wisest way Ontario could spend the money in terms of taking advantage of low costs in construction to put in place sewers and watermains and roads and buildings that the province needs. I don't want to lose sight of that.

**Mr Sterling:** Okay, I won't go into the infrastructure argument. We might do that another day. You could enter into a debate on that. I just talked to somebody on the phone about it this morning, and they argued that infrastructure programs are not a way to get the economy rolling. I would say I'm not sure that that's right or wrong. I think it would depend upon the construction industry in any given jurisdiction. Ours is suffering so badly in this jurisdiction that in order to keep it alive, we've got to keep some activity going.

**Mr Empey:** That's the most important point.

**Mr Sterling:** I agree with that. My point is this: We shouldn't be encouraging the federal government to do any programs. If there is a need to do them, we should be taking the leadership here, doing them on our own and raising the necessary finances for them. We'd get a lot better bang for our bucks than we're getting out of this program.

**Mr Sutherland:** I know Mr Sterling has concerns that Ontario is only getting 36% but I want to say that's probably a better percentage than we got out of most deals with the previous federal government on just about any program. I think that needs to be noted.

The other fact, that this government was able to stand up to the province of Quebec and now allow Ontario construction firms to go into Quebec, means that we'll probably in the long run be getting more than that 36%,

so I think those points need to be mentioned.

You expressed concern that in some cases the full capital amounts weren't expended in certain years, and I think all of us have some concern about that. You didn't highlight what some of the reasons are. Of course, some of those reasons are that for some projects, for whatever reasons, approvals processes don't go forward within the fiscal year; the money doesn't get spent in that fiscal year. I just had a situation where a local municipality decided it didn't want to pursue part of a Jobs Ontario Community Action project so that money, because it's so late in the year coming back in—so we need to keep that in mind.

I noticed in your supplementary you did compare it to the 1982-83 recession and I think we need to keep in mind the amount of dollars we're talking about. At that point we were talking about going from \$1.4 billion to \$2.1 billion and we're talking well over \$3 billion of capital expenditures.

**Mr Frank Bisson:** We didn't say it in the speech but we have a background paper. If you go to the background paper, you'll find that construction expenditures actually went up in 1982-83 by something like a third and they have not done that in this one here. They've gone down.

**Mr Sutherland:** I'll just remind you too, though, in that recession provincial revenues still increased throughout all those years. In this recession provincial revenues have actually declined.

**Mr Frank Bisson:** Our concern is that every time there is a perceived increase in the deficit, which occurred just last year, we cut capital expenditures, not operating expenditures. The \$300-million capital expenditure was the big cut as soon as the deficit went higher last year.

**Mr Sutherland:** I think you're ignoring the things that we've done on the social contract expenditure control. If you look at the type of reductions we've done on the operating side—

**Mr Frank Bisson:** That was prior—

**Mr Sutherland:** I know, but I'm saying if you look at the amount we've done on the operating side, it would be far greater than anything you find under capital.

I'm just trying to say that I think all the information needs to be put out. I think all of us would like to get all the capital expenditure done within the fiscal year, but unfortunately sometimes there are problems beyond our control, and I think beyond everyone's control. They don't allow that money to be spent in that fiscal year.

I wanted to ask you a question about whether you thought the Fair Tax Commission's report in terms of reducing the education portion of the property tax would have any impact on the construction industry in terms of reducing the cost of land development etc and whether that has any impact on increasing construction.

**Mr Frank Bisson:** We haven't really looked at that. I don't think we can comment intelligently at this point.

**Mr Sutherland:** Sure. Okay.

**Mr Phillips:** I appreciate the comment. I personally think your figures are accurate. There's not much doubt

that the government has cut about \$300 million out of this year's capital and it's lower than it was two years ago. I think that's fact.

My first question is that you're in favour of fees, and I think one of the things the province has committed itself to is to speed up capital projects by what they call selling revenue streams. They will essentially sell off a future source of revenue in order to speed up a capital project. They will sell toll roads that the private sector will build. I think we will see a speedup in capital expenditures, and rather than being paid for taxes it will be paid over time through tolls.

I think that will happen with sewer and water construction, that they will essentially say to the private sector: "That's what the Ontario water corporation is for. You will double the water rates" or something like that, and the owner of that will have the access to that revenue stream. The government has said it is committed to selling revenue streams to speed up capital projects.

I gather you're very much in favour of that and that would be your recommendation.

1100

**Mr Frank Bisson:** We are quite aware that the government's cupboard is quite bare and that there is all kinds of private sector money on the sidelines. Essentially, our thought is that this should be countercyclical spending. We don't expect it to continue for the long term, but at this point in time we think a countercyclical approach is the right one.

**Mr Phillips:** In my opinion, it's a different way of raising money; it's a different way of debt financing as you sell. Is that a fair way of characterizing it?

**Mr Frank Bisson:** Yes.

**Mr Phillips:** Should we be showing that as debt if we are going to—

**Mr Frank Bisson:** You and I have discussed this before; we did in the three crown corporations. I see no problem with the government's current approach, using the three crowns, because I feel this is countercyclical. I don't think this is a 20-year program; I think this is a two- or three-year program to suit a need at a point in time when the economy would not allow these things to occur otherwise. I think it's a logical way to do it. In the long run, I don't think you would want to do that.

**Mr Phillips:** If I were in your shoes, I would be very strongly in favour of it as well. My concern is that when you sell off a revenue stream, you've sold it off and that's a source of revenue you don't have available for the future. As I say, it's kind of gone, but I gather from your recommendation that—

**Mr Frank Bisson:** I don't think it would happen otherwise. This is the other problem. If you did not go to the private sector at this point, Highway 407 would not have been built now. There are some real advantages to that. It's the same with the upcoming sewer projects, water projects and so on. There is a good and substantial need for these projects and, if private sector capital is available to do them, we have no reason not to do it that way; I think that makes some sense.

**Mr Phillips:** Your recommendation on a corporate



minimum tax is useful and it would be helpful for us to know a little bit more about the implications of that, because that's a fairly detailed comment.

**Infrastructure investment:** We hear a lot about that we are into an era of information and technology and we have got to make sure we're making more than just the historical infrastructure investments. Is there any risk that we are still looking in the rear-view mirror of infrastructure investments when the bulk of our capital is going into historical infrastructure investments and not into, as they say, the electronic highway or those sorts of investments?

**Mr Frank Bisson:** I'll let Bill comment on that.

**Mr Empey:** My immediate reaction is that there are lots of high-tech infrastructure proposals that have already been taken up and a lot of the infrastructure spending is very much forward-looking in the sense that it's focused on environmental issues, for example, a lot of the sewer and water infrastructure. It's not high-tech in the sense that the structures that are being put in place aren't sophisticated in any engineering sense, but it's forward-looking in the sense that it's structures that deal with new kinds of problems, in particular, environmental problems.

**Mr Phillips:** If you go by what you read in the paper, you would think that we should have sewers, highway and then whatever you call it—the buzzword is electronic highway. You would think that in our infrastructure program, we would have a fair chunk of investment in the information era. There is at least that risk that as we look at our capital program, it tends to be more historical than—

**Mr Frank Bisson:** I think one of the problems our generation has is it has not kept up its infrastructure. If you read any of the people who write on productivity, you cannot have productivity without a proper infrastructure. You can't go and create a new Barrie without there being infrastructure there, whether it be hydro-electric power or roads or sewage treatment plants. Our problem has been for 20 years we have not done anything with it.

**Mr Phillips:** I'm not disagreeing with you. When I said infrastructure, you said we haven't kept up our infrastructure and then used the historical infrastructure argument. Have you any advice for the Legislature? Should we be broadening our definition of infrastructure?

**Mr Frank Bisson:** I think there should be a balanced approach. We should be looking at the electronic highways as well as the typical ones. I agree with you there.

**The Chair:** I thank the Council of Ontario Construction Associations for its presentation.

#### CANADIAN BANKERS ASSOCIATION

**Mr Michael Green:** Good morning, ladies and gentlemen. My name's Michael Green. I'm the regional director for Ontario for the Canadian Bankers Association. With us today is Mr Steve McNair, who's the vice-chairman of the Ontario committee, and Mr Phillip Buxton, who is a member of the Ontario committee representing the schedule 2 bank environment in the province. Also accompanying me is Ms Bussey, who will be making a formal presentation on behalf of the CBA.

Accompanying her is Ms Barbara Amsden, who's director, financial affairs, for the Canadian Bankers Association, and Ms Nancy Compton, who is with the Canadian Bankers Association in financial affairs. There you have the panel.

**Ms Judith Bussey:** CBA represents the chartered banks of Canada: seven domestic banks and 53 active foreign banks. Thank you for allowing us the opportunity to meet with you this morning. These discussions allow us the opportunity to shed some light on many misconceptions regarding taxation and budget matters. I'd like to address first a couple of these misconceptions.

The first is the belief that banks pay little tax. The facts do not support this. In fact, the Big Six banks alone last year paid more than \$2.4 billion in Canadian income and capital taxes. All told, the Big Six banks paid over \$3.6 billion in taxes to all levels of government in Canada last year. This compares to less than \$3 billion of worldwide after-tax profits.

In Ontario, \$1 of every \$8 of corporate income and capital tax revenue comes from the banks, yet only one in every 50 employees in the province works for a bank. In dollar terms, the banks paid more than \$700 million to Ontario municipalities last year. That's more than 50% of all such taxes paid across Canada last year, which is a disproportionate share.

Ontario's large share is due in part to the fact that Ontario is more economically active than the other provinces and is able to attract more banking activity to meet the financial requirements of its residents and businesses. It is also due to the fact that in the past the banks have chosen to locate regional head offices and other backroom activities in the province. As a result, about 50% of the banks' staff are located in Ontario compared to the 37% share of the population generally.

The second misconception is the belief that if corporate taxes are increased, the tax burden will somehow fall more lightly on individuals. We believe that if this perception is not challenged and dispelled, in the long run the opposite will actually occur. As noted in the report of the Fair Tax Commission, the corporate tax burden tends to be borne by employees, consumers and investors. In addition, as the tax burden on corporations grows, tax will be an increasingly important factor in decisions to locate operations to friendlier fiscal environments. This will cause the tax and employment base of Ontario to shrink, or at best to grow more slowly.

#### 1110

But we are not concerned only about our own taxes; we also care about the impact of tax policies on the Ontario economy as a whole. The recent corporate minimum tax paper notes the attractiveness of Ontario with respect to transportation, proximity to markets and so on. However, a recent Peat Marwick survey of 1,100 companies indicated that tax is a leading factor that would help organizations compete in world markets. In this survey, tax ranked ahead of communications, transportation and market proximity. The worst taxes are those that are fixed, that must be paid before a company earns a penny of profit. These are taxes such as capital and payroll taxes. Capital tax is a disincentive to investment,



while payroll tax has discouraged job creation.

Canada is close to the highest-taxed jurisdiction among the seven largest industrialized countries. This point was made by the federal Deputy Minister of Finance last year in a statement to the House of Commons committee. The following day, John Crow suggested that higher tax rates could end up being self-defeating for government and "already may have had adverse implications for incentives and investments." As the Ontario Minister of Finance himself has publicly recognized, increases in tax rates do not necessarily result in increased revenues, and tax professionals are concerned that more Canadians may turn to the underground economy to avoid taxes in the wake of recent increases in provincial personal income taxes. It is very difficult to bring back this lost economy.

Yet another tax increase is looming for banks and certain other industries. Ontario has indicated that it is considering expanding workers' compensation to industries that are currently exempt. The banks strongly oppose this for two reasons: First, the banks and certain other companies have comprehensive benefit plans in place providing coverage for injuries and health-related matters inside and outside the workplace; second, for federally regulated companies, there are a number of provisions in federal law that already provide protection and benefits to employees.

We recognize that workers' compensation in Ontario is in crisis. We agree that reform is needed to address the deficiencies in the current system. We also believe that the reform process should be carried out with both labour and business taking some ownership of the system to recommend efficiencies, without expanding coverage to industries that already provide comparable benefits to employees. This is nothing more than a new tax and one we strongly oppose.

With respect to tax issues, then, we hope that the committee will keep in mind the following points:

(1) The total tax burden—federal, provincial and municipal—must be considered. In today's global market, business can be conducted across the border and around the world.

(2) The high fixed tax burden, with its emphasis on payroll and capital taxes, including workers' compensation, creates high barriers to entry for new and expanding businesses and discourages investment in the physical and human resources Ontario needs.

(3) The complexity of the tax system is a further disincentive to business. The introduction of a minimum tax adds to the compliance burden, to expense and to uncertainty of the tax environment in Ontario at a time when the economy is still not strong and the business outlook remains pessimistic.

(4) As the economy continues to recover, expenditures will naturally reduce. This, in turn, will slowly increase tax revenues. Any increases in tax revenues which arise from the improving economy should be used not to fund new expenditures but to reduce the deficit.

Of course, taxes are only one side of the budget equation. On the expenditure side, recent polls suggest that a majority of Canadians now understand and are

concerned about Canada's debt and would prefer that the government not undertake new expenditures at the expense of the deficit. Lower-cost means of delivering the services must be considered. One area where we believe costs must be cut is through eliminating trade barriers and eliminating unnecessary or multiple layers of legislation and regulation.

We realize this is a complex area and we are approaching the federal and other provincial governments as well to provide input and support to this process. Ultimately, however, we believe that spending cuts will have to be made. We cannot grow our way out of our debt and deficit problem. As a minimum, any reduction in expenditures arising from the improving economy should not be used to increase expenditures in another area, and all other expenditures should be held flat or reduced.

Unfortunately, federal and provincial debt levels continue to grow. Excluding the debt of various government-sponsored pension and other income-support plans, Canada's general government debt, as a percentage of GDP, ranks second only to Italy's among the G-7 countries. This ratio now stands at 59%, up from 54% barely a year ago, and is much higher than the ratio for that of its free trade partners, the US and Mexico.

The debt of Ontario, its municipalities and public sector bodies now totals \$78 billion, or about \$7,700 per capita. Adding in the federal debt, the per capita debt for a resident of Ontario is now \$25,000, or about \$100,000 for a family of four. Capital markets continue to be concerned by Canada's growing debt load and have shown themselves particularly volatile in the face of credit downgradings, political uncertainty, continued deficits and growing debt.

Despite good efforts, we are worse off today than we were a year ago from a debt perspective. We understand that Ontario's decisions have been very difficult. Ontario must nevertheless continue with expenditure reduction efforts, as revenue flexibility has been limited by three budgets of tax increases.

Deficits year after year mean more debt and higher interest payments. Indeed, interest payments are already eating up 32 cents of every federal tax dollar collected and 22 cents of every Ontario tax dollar collected. As well, more and more of this interest is being paid to foreign creditors, rather than staying in Canada to be spent on Canadian goods and services. Continued deficit financing, even if aimed at creating employment, ultimately means more tax dollars spent paying interest on the debt, rather than being invested in productive capacity, new jobs and support for social programs. Because of uncertainty about the future, consumer confidence remains low, despite very low interest rates and low inflation.

In the end, the only cost-effective way we can maintain our standard of living, provide social programs and offer job security to Canadians is to unfetter the private sector and let it create jobs.

I would now like to pass the microphone to Steve McNair, who is the vice-chair of the Ontario committee. This committee undertakes a number of initiatives, including programs to stimulate growth in the small and



medium-sized business sector of the economy, the sector which has been called the engine for job creation.

**Mr Steve McNair:** Small business and attracting business to Ontario: The Ontario committee is involved in helping small business in several ways. In this regard, a number of key educational initiatives have been developed in partnership with the provincial government of Ontario, regional municipalities, chambers of commerce and the province's community colleges. Feedback on results to date indicates that the programs are well received by the small business community. As well, the banks are strong supporters of small business through lending under the Small Businesses Loans Act. Finally, the banks are playing a growing role in attracting business to Ontario.

Following are details of the various initiatives by category.

In 1993, the Ontario committee entered into partnership with the Ministry of Economic Development and Trade and the Ontario Development Corp, in cooperation with Humber and Centennial community colleges, to develop Running Start, a business training program for applicants under the new ventures and youth ventures loan programs. The Ontario committee provided funding to develop the course material and CBA staff assisted in curriculum development. The program is being piloted in Metropolitan Toronto until March 1993, after which it will be rolled out more broadly in Ontario. Participants surveyed between September and December 1993 rate the course excellent.

Bankers are participating with the ministry as speakers for the small business seminar series called Starting a Small Business. Some 1,600 seminars were run between 1987 and January 1994.

A series of small business seminars designed to improve financial management skills were held in Ottawa, Orillia, Kitchener-Waterloo and the region of Halton in 1993. The seminars, sponsored by the Canadian Bankers Association in cooperation with Industry Canada, the Ontario Development Corp, the regional municipalities, chambers of commerce and the boards of trade, focused on key aspects of financial management, preparation of a business plan, the Small Businesses Loans Act, the Ontario Development Corp programs, trade finance and marketing.

A series of small business seminars is currently being delivered in the regions of Peel, Durham and Metropolitan Toronto. The seminars are designed to educate small business entrepreneurs on key aspects of business planning, the Small Businesses Loans Act, Ontario Development Corp programs and services.

In terms of the Small Businesses Loans Act, the SBLA is a federal government program designed to help new and existing small business enterprises—gross revenue not exceeding \$5 million—obtain term loans from chartered banks and other lenders for financing the purchase and improvement of fixed assets. Originally established in January 1961, the program was significantly revised as of April 1993 and extends until March 31, 1998.

Since the April 1 amendments, all schedule 1 banks have been actively promoting the Small Businesses Loans Act. The number of new SBLA loans has nearly tripled from April to December 1993, compared to the same period in 1992. The dollar volume of loans quadrupled as well in this period.

A number of banks are offering loans at prime, a full 1.75% below the legislated ceiling.

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If you look at the following table, you'll see the comparison. In 1992, the number of loans made was 2,293, and in four months alone of 1993, it escalated to 6,966, so there was literally a tripling in the number of loans, and the volume of loans doubled in that same period.

For your information, we're pleased to provide a copy of The Banking Industry Supports the Small Business Sector, which outlines in more detail the small business lending and other initiatives being undertaken by the industry as a whole throughout Canada. It also lists the additional services to small business that the six major banks provide.

In 1993, the Ontario committee met with Chairman Maurice Strong and other representatives of Ontario Hydro to explore the potential for joint initiatives to provide energy efficiency and economic development. Following changes in the utility's treasury and internal banking operations, formerly associated with its incentive and rebate programs, Ontario Hydro was seeking ways the banking industry could assist it to become more cost-effective. This should help Ontario Hydro attract new businesses to locate in the province by offering ways to save on energy costs.

The chairman of the Ontario committee and a CBA staff member sit on the advisory board of the Ontario Investment Service, being developed by the Ministry of Economic Development and Trade. The project will be a public-private sector partnership designed to provide customized business information to stimulate business investment in the province. The CBA expects to continue its support to this worthwhile government initiative.

The CBA, in partnership with the Canadian Chamber of Commerce, Department of Foreign Affairs, Export Development Corp and Canadian Manufacturers' Association, has developed a trade finance seminar called The World is Our Market. The full-day seminar was successfully piloted in Toronto on January 20. It is designed to assist small and medium-sized businesses improve their export sales or to assist businesses entering the export market. The seminar helps them gain access to innovative bank and government trade finance programs and services, and increases their awareness of government export promotional and support programs and other international trade-related educational activities, such as the Forum for International Trade Training. A second seminar is planned for May 25, 1994, in Toronto.

Bank executives are consulting with Industry Canada on ways to assist the growth and development of knowledge-based industries through access to working capital financing and sources for equity capital. A Canadian



Bankers Association staff member sits on the Ontario Investment Promotional Coordinating Committee of Industry Canada, a forum to share information on programs and initiatives designed to attract investment and business development to Ontario.

In conclusion, despite the efforts of our industry, the Ontario government and others to encourage businesses to establish themselves in Ontario, there is a growing number of real or perceived barriers to entry which make Ontario a less than hospitable environment.

A recent survey showed that small business is concerned, first and foremost, with taxes, and only slightly less with government legislation and regulation. Uncertainty about what the future will bring is also a major deterrent to undertaking any significant new investments, even for large corporations, particularly after three years of new taxes and tax increases, after three years of new and more onerous legislative changes, and as the spectre of the introduction of or increase in workers' compensation premiums looms.

We agree that Ontario's financial problems cannot be solved in a year or even in several years. A workable, sustainable solution will require time, constant careful management and commitment. We urge the Minister of Finance to remain firm in his efforts to reduce the deficit and, ultimately, the debt of the province and encourage him to set specific goals to bring down the deficit, both in relation to GDP and in absolute terms.

We believe it is possible to foster growth in the independent business sector at the same time as the deficit is attacked. Indeed, we believe the deficit and the concerns it raises about present and future tax loads is one of the greatest impediments to growth in this sector at this time.

We'd be pleased to answer questions you would have.

**Mr Jim Wiseman (Durham West):** I'm fairly curious about your presentation, because three and a half years into being the member for Durham West, I would hazard to say that in any group of people I can put together, the banks are the one group of people who are almost universally condemned for what they're doing in the marketplace.

The Toronto-Dominion Bank, as Venture showed last Sunday night, is calling lines of credit and business loans. I've had a number in my own riding where if it hadn't been for the securing of loans by the Ontario Development Corp, companies that had existed for 20 years would have been put under for no really good reason, because that company now is still in existence, and others.

The Bank of Montreal is acting to a couple of companies in my riding in a way that is nothing short of what they would have described as Mafia attitude towards putting these businesses out of business.

Bank profits continue to go up at a rapid rate. Banks will not loan money, will not even consider lending money, if the amount is less than \$5,000. When you add it all up, the view of my constituents who come into my office on a regular basis complaining that they can't get money to start businesses and asking where I can help

them is entirely different from the view you have presented here today.

The view in my community is that the banks are the greatest impediment to economic recovery and that somebody has to do something about the monopoly control that the banks have and the disregard that the banks are showing for businesses and the needs of small businesses. You can hold all the seminars you want, but the view in my community is that you are really out of touch with what is necessary for small businesses to get started, to survive and to continue.

I guess the question I would have is that if you want to talk about myths, as you state at the beginning of your presentation, then that's the reality. If you would like to comment on that, I would like to hear what you have to say, because my view is that banks are out of control, that they're a monopoly, that you're almost dictatorial in what you do to people, and that you have no sensitivity to the burdens that you're placing on small businesses.

**Mr McNair:** There are an awful lot of comments to try to respond to, but I will respond in a couple of ways.

The information we tried to provide today would show a number of interactions, for example, with the greater Toronto area mayors. We met with them a year ago. The seminars were an output of that process, because frankly what we found was that in many cases people who were trying to start small businesses did not have an understanding of (a) how to access funds, or (b) perhaps what was required to access funds not just from the major banks but also from other opportunities for financing.

Our experience certainly has been a very favourable response to that seminar. We are running one actually in Durham region, I believe in April, and as well one in the region of Peel in March. The purpose, again, is not just to talk about how you can get financing from banks, but frankly to try to increase the likelihood of the business succeeding.

If you look at the numbers presented in the paper, the increased financing under the SBLA is a significant growth of financing to the small business sector. That was something that was worked in partnership with the federal government as well. The numbers do speak for a significant increase in financing. That is real and that is tangible.

I don't have the stats with me today in terms of the total investment in small business by all the major banks, but the number is very significant, very large. It does vary by organization, but on behalf of the industry, it is a humongous number that is real and is tangible.

There are situations, and I'll be frank, where we end up with anecdotal issues around what the issues are that create difficulties in terms of individuals getting financing from all the major banks. But if you look at the activities all the banks are pursuing—for example, under the new ways of trying to develop business, you mentioned the information and technology in the last presentation. The banks have acknowledged that one of their challenges is to find ways to support entrepreneurs in those kinds of activities to try to ensure that we can value what the enterprise is worth so that we can provide support where



it makes sense. Most of the major banks, if not all the major banks, at this point in time are exploring individual activities because they believe that the industry, the company, to do well, can create a competitive advantage for itself. I can assure you that in all the major banks there's a lot of activity and energy trying to focus on ways to meet those lending opportunities.

I can't respond to comments like "dictatorial." I can assure you that people don't sit in the towers on Bay Street and think, "How can we penalize and abuse small business entrepreneurs in Ontario today?" That certainly is not the approach.

**Mr Wiseman:** Sure looks like it.

**Mr McNair:** I can appreciate your comment, but I can assure you that's not the case. What I can assure you is that banks are looking for opportunities. I sat through a presentation with the greater Toronto area mayors, I guess the week before last, and a presentation by the president of the Ontario Development Corp. She stated that the ODC is not in the business of giving grants. I gave the comment as well that the banks are not in the position of giving grants. We are trying to find ways to create viable opportunities, identifying clients who are going to be successful and assisting them in meeting the needs of their business, and at the same time remaining viable ourselves. I think that would be the view of the industry.

**Mr Wiseman:** But you have a \$5,000 limit. You won't even write a loan under \$5,000.

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**Mr Bruce Crozier (Essex South):** Thanks for appearing before us today. I, to some extent, echo the comments across the floor in that it's difficult for small business when they see the huge international losses, and in fact some of our domestic losses, that are written off by banks. To that extent I echo what he says, that the small business person said, "Well, gee, they can lend and lose money to the big guy but they can't to us."

In all fairness, I guess what I would comment is that a lot of small business people, those who want to start a small business, once they get the assistance of the lender in preparing a business plan—oftentimes I think they go to the lender without any plan. They have an idea, but they don't have a plan, and it's more difficult these days to sell an idea then it is to sell a business plan. If the banks can help and educate in those areas and help them prepare business plans, that certainly goes a long way towards easing that tension between the two.

I note on that page 4 of your submission, under "Expenditures," you mention "eliminating unnecessary or multiple layers of legislation and regulation." We have a jobs task force going in our caucus, and that comes up time and time again, that the current government and/or future governments are going to have to realize that small business, business in general, is just tired of regulation and legislation, and perhaps the less we legislate—I think too often governments look at their record of legislation passed. I think the new objective, like zero budgeting and zero deficit, should be zero legislation, and perhaps that will assist.

I've let you off easy. I don't think I asked a question in there.

**Mr Carr:** I'm one of the politicians, who disagrees. I guess there are even Conservatives who feel the same way Mr Crozier and Mr Wiseman did. I look at the banking system and we have the safest banking system in the world. I look at the US where they have pumped literally billions upon billions upon billions with the losses that went on there. Politicians at all levels and all political stripes just can't leave it alone. The one thing that's working is the banking system and they want to get in and screw that up as badly as they have other things.

Notwithstanding, there are some problems. The one thing we know for the seniors of this province who are living off their RRSPs or whatever is that the banking system is safe, and I think that should be the number one priority.

It's interesting when you say people think bankers sit around saying, "What can we do to hurt small businesses?" Small business thinks that governments of all political stripes are sitting around saying, "What can we do to screw up businesses and hurt them?" So there's a communication gap between both sides, and I think you see where it's happening and what we can do to bridge that.

But I want to get into the bigger issue that you touched on, the deficit: \$25,000 for every man, woman and child in this province is what we're in debt. You mentioned a family of four; I'm married with three kids. The amount I owe is more than my mortgage. When I look at it right now, I think this government thinks it has done a good job with the social contract, and of course we're still at \$10 billion. We need strong, determined leadership similar to what is happening in Alberta, balanced budget provisions where you really make the cuts and really do it, because quite frankly, as Mike Harris said: "Christmas is when kids get something and the parents pay for it. Deficits are when parents get something and the kids pay for it."

Would you, as the CBA, be in favour of the tough provisions that Alberta's taking, with the Ontario government taking those in the next budget? You know it won't happen under this government, but would you, as a major group in this province, support the tough measures that are being done in Alberta happening in Ontario?

**Ms Bussey:** Our position is that expenditure cuts have to be made. I don't think it's our position to necessarily tell you which cuts to be made.

**Mr Carr:** But you know what happens? Everybody comes in and says that with kid gloves. I know and appreciate you've got to work with governments of all political stripes and you've got to be nice, and Matthew Barrett sits down with the Premier and so on. I guess I'm getting cranky in my old age as I'm sitting around here. These business groups come in—people remember when I used to be a nice guy here—and they say, "Well, we're not telling you what to do." Why can't we have some honest debate?

**Mr Wiseman:** You fooled us for all these years.

**Mr Carr:** Well, maybe you thought I was cranky



when I first showed up. Why can't we have some honest debate where you say yes, that needs to be done. I understand individual banks can't, but as an association, why can't you be a little more aggressive to governments of all political stripes, not just this one, and really tell—

**The Chair:** One of the problems today, Mr Carr, is that our time has just about expired. I wanted to let you know that.

**Mr Carr:** Probably because politicians talk too much and you never get a chance to say anything.

**The Chair:** Maybe the Canadian Bankers Association would want to make a quick comment.

**Ms Barbara Amsden:** Obviously, we cannot comment on the Alberta expenditure plan. I haven't seen it or reviewed it in detail. But the deficit is a very serious concern of the banking industry. Yes, we can see deficit financing during periods of recession to sort of counterbalance, but I think we've done so much counterbalancing now that we're almost spiralling out of control.

Ms Bussey had mentioned that 35 cents out of every federal tax dollar is going to pay interest. You're seeing people complain they're paying \$1 for services and they're only getting 75 cents worth of services because of the difference being paid in Ontario to go for interest, and much of that interest is being paid to foreigners.

It would nice to think that we can continue to offset the recession we're in by more spending, but it has to stop, and I think it has to stop now.

**The Chair:** I want to thank the Canadian Bankers Association for its presentation.

ONTARIO ENGLISH CATHOLIC  
TEACHERS' ASSOCIATION

**Mr Claire Ross:** My name is Claire Ross. I'm president of the Catholic teachers of Ontario. Jim Carey is the general secretary of OECTA. Our first vice-president is Marilies Rettig, and Greg Pollock is one of our staff officers. We're delighted to be here this morning to give you some of our views relative to the budget that you will be preparing.

As the submission indicates, we speak for 34,000 men and women who teach in the Catholic schools of Ontario, beginning in kindergarten, all the way through to OAC. We're part of the Ontario Teachers' Federation of 130,000 teachers.

As we come before you, we certainly are cognizant of the difficulties of the economic climate we're in, and of the sacrifice and the pain and the hurt that is throughout the whole of Ontario. We recognize that some of the factors are certainly beyond the control of this government and indeed any government. I think we understand, as we hope most people in government recognize, that we're involved in what is called a profound period of restructuring and reordering that's affecting not just Ontario, but Canada as a whole.

We would remind the committee that in the past number of years there have been some dramatic forces, primarily financial, that have been at work in our systems and that at the present time we are under the control of the social contract, as well as what is called the expenditure control plan. I don't know that too many citizens are

aware of it, but it is the board's social contract relative to its operating expenditures.

As I appear on behalf of the Catholic teachers of the province, I want to emphasize to the committee that what is being reported out in this province is a two-tiered system of education: those who have and those who haven't. If you don't have, it's because of your assessment base, which is directly linked to the property and the commercial assessment base of the province. School boards in Ontario—and some of them are now becoming the public boards as well—that are located in northern Ontario—the rural boards, the Catholic boards—are becoming part, if you like, of that secondary school system that does not have the resources necessary to provide the kind of education and the educational reordering and restructuring necessary for change to take us into the 21st century.

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It's no understatement to suggest that unless this situation is reversed, there are going to be serious problems throughout the whole of Ontario as the citizenry begins to realize that place of birth and where it is that you choose to live will determine directly the nature and quality of education that will be yours.

The social contract reductions have been particularly difficult for the separate schools. We keep in mind that prior to the social contract there were what we called significant reductions in the transfer payments to boards of education. We live by those payments. They are what sustain and maintain us.

We were forced prior to the social contract to begin to literally cut our systems to the bone, where primarily we're moving to a system which can only be described as that of the 1950s, in which we had a teacher, a principal and very few, if any, other kinds of resources, a system lacking in complexity and sophistication, a system unable to deliver the kind of complexity of program base required because of the changing nature of the world in which we find ourselves.

When the social contract came along, we were forced to downsize from boards of education which were already dramatically reduced and which in terms of the history of the school system had never achieved that kind of platform of resources that accrued to the public system of education.

We find ourselves now in a very desperate situation. As you are aware, one of our boards almost went bankrupt before Christmas, the York Region Roman Catholic Separate School Board, a large board representing thousands and thousands of students and teachers, a board which if such were to happen would represent a very significant problem for the government, and I think would raise very serious questions in the minds of the people of this province.

We would suggest to you that this situation is not necessarily unique. I think it is a sad comment on the province and on the bases of funding in Ontario that we have boards, parents, students and teachers who wonder whether or not the financial viability of their board is going to be such that they're going to be able to stave off



bankruptcy. I think we're past the time in pointing the accusatory finger of guilt at trustees and administration, at poor management and so on. I would like to join in my comments with the principle that was articulated by the Fair Tax Commission, in which it said that government in this province should embrace the principle that when a taxpayer pays for a particular service, the quality of that service should not be relative to the circumstances of where it is that you live, that we should pay in the same measure in all parts of the province for the services that are to be provided by the government.

I'm here this morning to tell you that we very strongly endorse this principle of equity. We recognize that the Fair Tax Commission has not defined the specifics as to how that would come about. We recognize that they have proposed moving from the property tax base to an income tax base. We are prepared, as this teachers' organization representing the Catholic teachers of Ontario, to support change.

I think everyone around this table quite frankly recognizes that the present system is not working, and the problem is that if we shortchange our children, be they in public schools or Catholic public schools, we're going to reap the dividends of that kind of negativity in the years to come. It is something that we're just simply not going to make up.

I'm here this morning to strongly make the plea to you that as you put together this budget, you have to consider the two-tiered system of education which has been created in this province. You have to address the question of equity. You have to deal with the matter that some boards now are in far more desperate need than others and that some boards have much while many have none.

We ask you then, as you formulate your plans, particularly with respect to the financial resources that will be reported out by you, that you keep these thoughts in mind, and with sensitivity and hopefully the kind of expertise you can bring to this matter, make at least some adjustments in the interim that will make next year a little less frightful for those of us who are struggling to provide a quality education while at the same time recognizing that our resources are diminishing daily and that at some point in time we are going to find ourselves in the kind of situation that will be very difficult for us to manage.

Having made those preliminary comments, the Catholic teachers' association would be prepared to accept any questions you might wish to direct towards us.

**Mr Phillips:** You're in support of the Fair Tax Commission, I gather, and fundamentally of the province determining how much money school boards will spend. Essentially, raising that money through provincial sources is something your group is supportive of.

**Mr Ross:** We're open to that, there is no question. We're open to whatever alternatives can be reasonably brought forward that will begin in fairness to address the awful inequities which characterize the present funding base in this province.

**Mr Phillips:** There are some who would argue that this would, by necessity, lead to province-wide bargain-

ing. If the province is essentially responsible for raising the money and allocating the money, there would have to be some coordination. Is that something your group would be supportive of?

**Mr Ross:** No. We're not supportive of province-wide bargaining. I think there are all kinds of arguments for and against province-wide bargaining. I think what's important as we go forward is that at some point in time there has to be an end to this piecemeal approach to everything. What has to be put down is a global plan, and in terms of the vision, whatever it is, all of us have to be allowed to input and react in a way in which, hopefully, we will come up collectively with what is best and right for the children of this province.

**Mr Phillips:** There's a certain logic to your argument. If you carry it to its extreme, that pupils should be treated equally regardless of area, you might suspect that teachers would want the same arrangement. At some stage, as I say, if the province has that responsibility, there's been a view that it would also want to have some say over the expenditure side, obviously; any provincial government. You would want most of that except you would still want local bargaining.

**Mr Ross:** We're in favour of as much local autonomy as possible. I don't necessarily think we can create the kind of system that Egerton Ryerson at one time created in the province of Ontario, where every student at a particular point, on a particular day, was at the same place in the textbook. That's the logic on the other side and sometimes the logic of that does not necessarily fit so well into reality.

All I'm saying is that this association believes very strongly that there has to be change. We're willing to be partners and participants in that change. Hopefully, that change will be on the basis of the kind of vision where all the stakeholders are able to see what the pieces are and react accordingly so that ultimately the mosaic that is reported out will be the kind of fabric about which all of us can afterwards say that this will serve the students well.

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**Mr Phillips:** I should know this but I'm not sure I do. In one of your exhibits, the implications of the social contract, at the end of the social contract, right now I gather it is the expectation that scenario 1 is what's happening and what would happen. That's a fair interpretation of that, is it?

**Mr Ross:** Yes. Certainly, speaking for our association, one of the great injustices of the social contract is that it's going to require our teachers who are entering the profession for the first time, potentially, depending upon the exit strategy that is to be announced by government and which is to be legislated, will pay up to \$90,000 each. If the citizenry of this province were ever faced with that kind of a direct tax levy, I think there would be rebellion and insurrection in this land, and yet that is what our young teachers are faced with right now in the loss of their increments and in the potential permanent loss of those increments.

**Mr Phillips:** One of the conclusions one would reach



in the Fair Tax Commission, of which you endorse the recommendations, is that the role of school boards would change fairly substantially. I think the Fair Tax Commission indicates the province would essentially set the budgets for the school boards. I gather you're in favour of that, that the province would establish the budgets for the school boards, and then I gather the role of the school boards would be to spend those budgets in the most efficient way they can.

**Mr Ross:** One of the things that concerns me as an educator with long years of experience is that there is a bandwagon approach now in the media to say, "Let's get rid of boards and we're going to find something that will substitute and be better."

I would suggest that we have to be very cautious. I really don't have the answer to some of those questions. I don't think that the kinds of funding proposals in which we would have equity, and whether the money is coming from the provincial government or not, necessarily preclude local autonomy, and that there couldn't be a significant degree in terms of the quality and character of schools, as determined by local representatives, being fashioned in terms of the dollars that are being provided. I think there is a great danger now in jumping on the bandwagon, "It's open season on all the boards; let's do away with them because they are the problem," as it were, with education.

**Mr Phillips:** That wasn't my question. My question was, I gather you're embracing the Fair Tax Commission's report, which essentially says that the province would set the budgets for the school boards. I just want to make sure that I understand your recommendation to us, that this was something your group would be supportive of.

**Mr Ross:** The province basically sets the budget now in determining the grants and then of course boards are forced to raise above that in terms of local taxation. That's where the great inequities are coming in, because as the provincial share diminishes, the local share has to increase and then we start moving, certainly in the Catholic boards, towards bankruptcy.

There's no question that if there is a transfer and if there are dollars that are going to be coming in greater numbers from the provincial government, there would be possibly considerably more say. But I don't know that it would be really any more or less than it is at the present time, because let's face it, educational program policy in large part is mandated by the Ministry of Education and Training at the present time.

**Mr Sterling:** MPPs are now working for the same wages as they were paid in 1987-88. My experience with a public school strike about a year ago was that there was no empathy with teachers getting paid one cent more. In fact, many thought they should be satisfied with the status quo.

There doesn't appear to be any more money. There isn't any more money. In fact, we're operating now where we're spending 20% or 25% more than we're collecting. What are we going to do? It doesn't matter whether it's property tax or provincial tax. What are we going to do?

**Mr Ross:** We've reached the point, haven't we, in many respects?

**Mr Sterling:** I think so.

**Mr Ross:** Certainly for those of us in the separate school systems, and I can speak for myself personally, it must be four or five years since we've received any increases in salary, and in point of fact, with the social contract, we've been given the reductions that I think everyone knows.

At some point in time, I suppose, because we're looking at the general tax base problem across the province of Ontario, there has to be a decision in terms of what government is going to fund and pay for. In the last numbers of years, there have been no more dollars coming into our schools and yet the budget deficits keep exploding. I believe there probably is a very significant expenditure problem and that expenditure problem relates to an expanding expenditure base. In other words, we have certain essential services in place and then we keep adding more and more.

Then we try to cut back and suddenly we discover that the essential infrastructure on which we have built our society is beginning to crumble, because we've extended ourselves far beyond anything that the tax base was ever conceived as having to support. I think that's part of our problem. But that's a problem, with all due respect, that has to be put back in terms of your particular table, because only the politicians can make decisions in terms of how wide this general tax base is going to have to be in terms of its support.

**Mr Sterling:** That may be true in the final analysis, but certainly you don't want us to, as you said before, act in a vacuum in terms of making these decisions.

I'm really troubled by the whole concept, to know the huge number of people who are applying to go to teachers college. It almost is alarming when you're looking at it, in terms of thinking of the motivation behind these individuals. That worries me more than anything else, the fact that perhaps these individuals, or a good number of them, are more concerned with the remuneration that is presently paid to teachers than they are about seriously teaching. I hope I'm wrong, but I suspect that when you have 20 people applying for every one who is accepted, there's something out of whack here in the system.

**Mr Ross:** There's something out of whack, all right. We've created a world in which there isn't much hope or opportunity for our youth. We really and truly have. When I talk to my son, who graduated from university last year, he doesn't have the kind of world that was open to me. In point of fact, he's very fortunate to have a factory job right now, and he's trying to sustain himself and to get by. That's the kind of world we have created.

You find that there are more and more students staying longer and longer in school because, quite frankly, what else is there for them to do? They live in the expectation of hope that there's going to be a dramatic turnaround. There is some thought that there's going to be a shortage of teachers and that this may be the place where opportunity will find itself in a number of years.



But I do agree with you: We do have some extremely serious problems in this regard. I simply note that when you talk of dollars and money, the system I represent is one which, for the whole of its history and even now, is operating at a per pupil expenditure of about 25% less in comparison with the public boards. We do know how to cut. We do know how to live on the edge. That has been the whole quality and character of our history.

**Mr Sterling:** Yes, I acknowledge that. I represent the Carleton area, and the Carleton Roman Catholic school board is probably the most efficient in the whole area. On the other hand, the Ottawa Roman Catholic school system is probably not very efficient. So there are differences within your own system as well.

**Mr Ross:** Yes, there are.

**Mr Sutherland:** That's one of the points I want to pick up on. If we look at the growing demand for greater accountability in the education system, part of that comes for a greater consistency. Like I stated earlier, some boards do things very well in terms of curriculum. One board may be very good on the mathematics side, another board may be very good on the language side and another board may be very good in another area.

There seems to be some concern, though, in terms of the consistency. I don't think any of us are promoting going back to Egerton Ryerson that everybody should be at the same page in the textbook, but how do we maintain the strong local autonomy that you've suggested should be there and yet develop a better degree or a higher level of consistency in all those areas among all the boards?

Naturally, the question that's been popping into my mind lately, because we could bring in every school board and they'll tell us, "We do this very good, we do that very good," is how do we get that consistency and maintain local autonomy? The trend would seem to say that in order to ensure you get the consistency, then you need more provincial input and maybe a little less local autonomy.

**Mr Ross:** I'll give you my heresy and I suppose my Walter Mitty day-dreams that I was the Minister of Education and could make some of this come true. Assuming for a moment that there was equity and provincial funding to boards across this province on a proportional basis that treated all students the same, that the role of school boards would have to become, I believe, what the role of boards should primarily be, and that is the curriculum masters, to see that what students are being given is the right program base for life as it will be lived in the 21st century, because if we educate them for grandma's day and grandpa's day, we are taking their future from them because we're living our future now. Going back to the basics or educating kids for the past is not going to be the answer.

The problem in education is that we're for ever changing organizational structures. We're always addressing those kinds of issues, whether it be monetary, whether it be personnel, organizational structures that have absolutely nothing to do with the program base, because the moment you speak to the program base, you embark upon a path which is extremely critical and which can be one of criticism.

Nobody wants to be the kind of speculative futurist who says, "This is where we should be going," and boards are not being measured in terms of the creativity, the innovation, the relevance of the curriculum base, and thus we have problems of systemic irrelevance, absenteeism, dropoutism and violence.

**Mr Sutherland:** If I could just pursue that a bit further, my sense of some of the basis for local autonomy is to ensure that the curriculum meets local needs. For example, I represent a predominantly rural riding and I think the expectation there is that some reflection of rural life, agricultural life, be in the curriculum and those types of things. Can't that be achieved without the so-called sense of having so much local structure? It seems to me those questions are going to becoming forward.

**Mr Ross:** I think you have to have a significant local structure. You have to have an informed local structure, and even if you're in a rural area, for example, you would have to understand that we could not have a significant agricultural component, because in the next century only 3% of our people will work in agriculture, and to have a significant component of any school system tied to agriculture would be to educate our students for a reality in a world which is non-existent.

**Mr Sutherland:** But what people say is that even if you're using examples, like in my riding, math examples, try and tie them into a rural component that way.

**Mr Ross:** Exactly; I would agree with you totally.

**Mr Sutherland:** Can't that be done outside of having a significant local structure?

**Mr Ross:** I don't know. I would be very reluctant to take away some of the kinds of structures that have served us so well on the unfulfilled promise that if we move in this direction, this pig in the poke is better than the one we have walking beside us.

**Mr Sutherland:** If I can come back, wouldn't some say then that our structures are for the past, that as you were saying we can't have our curriculum for the past, that we need more modern ways?

**Mr Ross:** This association does support change. We are not going to be here as people who are protectively clinging to what is on the basis that that's the way we like it.

**The Chair:** I thank the Ontario English Catholic Teachers' Association for its presentation.

*The committee recessed from 1204 to 1405.*

#### ONTARIO SEPARATE SCHOOL TRUSTEES' ASSOCIATION

**Mrs Mary Hendriks:** Good afternoon. My name is Mary Hendriks, and I'm the president of OSSTA. I'm also a trustee with the Lincoln County Roman Catholic Separate School Board. With me this afternoon are Joe Kraemer, a trustee with the London and Middlesex County Roman Catholic Separate School Board and chair of our finance committee and advisory group for OSSTA; Pat Daly, chair of the Hamilton-Wentworth Roman Catholic Separate School Board and also a member of our finance committee; our executive director, Patrick Slack; Peter Lauwers, our counsel; our past-president, Betty Moseley-Williams, trustee from the Nipissing



District Roman Catholic Separate School Board; Carol Devine, vice-president with the association and trustee with Metro separate; and Earle McCabe, our deputy executive director. We will share the presentation this afternoon.

The Ontario Separate School Trustees' Association represents 53 Roman Catholic separate school boards in Ontario, which provide Catholic education services to more than 575,000 students. Our presentation will be referring you to highlights in our brief.

I am pleased to be able to tell you that the Ontario Separate School Trustees' Association is generally supportive of the reforms in education finance proposed in the report of the Ontario Fair Tax Commission. The commission understood and took to heart our deep concern about equity.

The situation that assessment-poor school boards find themselves in, particularly separate school boards, is very well described by the commission in the quote which is found on page 2 of our brief: "Those few who know the system well accept as a given that virtually every component of Ontario's system of local government finance is in a state of crisis or near crisis."

When Marion Boyd, as Minister of Education, said, "The education funding model is broken," she spoke the truth. Education finance reform is a matter of utmost urgency. If you walk away from this meeting today with no other impression in your mind, we will have done our job.

In his comments on the system, Professor Brooks, vice-chair of the Fair Tax Commission, said:

"The present Ontario system of school finance is inequitable, irrational, a blatant denial of equal educational opportunity, and an egregious anomaly in a province committed to liberal ideals. Students living in the wealthiest and most advantaged communities have much greater educational resources than students living in the poorest communities. In an economy that is indisputably provincial in character, we continue to treat educational funding as a predominantly local function."

The commission recommended a complete overhaul of the education funding system. We agree. We know that the process is now under way and we call upon the provincial government to proceed immediately with education finance reform.

**Mr Joseph Kraemer:** On page 4 of our brief we set out the commission's principles that we support. There are two that we want to emphasize:

"—Since all Ontarians are equally entitled to educational experiences that support lifelong learning, the ability of education systems to provide those experiences should not vary according to the amount of money that can be raised locally.

"—The distribution of centrally allocated funds for publicly supported education should vary only according to geographical or demographic variations in the costs of meeting needs fairly and equitably."

At the bottom of page 4 and the top of page 5 we set out our understanding of the basic model proposed by the Fair Tax Commission. While we support the model, we

have some specific concerns which we discuss in the next few pages.

The commission proposes a limitation on the ability of school boards to raise funds through a local levy. The commission believes that such a limitation is the only way to ensure that future provincial governments do not download. Our experience with downloading leads us to the conclusion that the commission is correct. OSSTA supports the limitation on the ability of school boards to tax, provided that the residential assessment base of school boards is equalized and provided that the system for designating school support is reformed.

The proviso is necessary, because even the ability to tax the residential assessment base creates inequities. The residential assessment base of public boards is richer than that of separate boards. The result would be a consequence that the report criticizes when it talks about revenue-driven inequities among students and taxpayers. In order to ensure equal per-pupil revenues for the same tax effort, OSSTA believes that a system of assessment equalization would be necessary. It could be funded by revenue received from the new assessment system for non-residential property.

The major reason there is a significant gap in the residential assessment per pupil between separate and public boards has to do with the system of designating school support in the province of Ontario. As you know, a person must choose positively to become a supporter of the separate school system or to become a supporter of the francophone section of a board. If neither choice is exercised, the system defaults to the public board and to the English. The result is that public boards end up with a disproportionate share of residential assessment.

Here is a point at which we must express some real disappointment with the Fair Tax Commission's approach. The commission accepts that there will be a gap in the revenue-raising ability between public and separate boards but does not choose to do anything about it. The problem is that the designation system leads to intense competition between public and separate school boards. That competition is one of the reasons cooperation between the two systems has its limitations. All residential ratepayers should be obliged to choose which school board they wish to support, depending on their constitutional entitlement. In those instances where taxpayers refuse or neglect to do so, their assessment should be pooled and divided among the coterminous school boards on the basis of pupil enrolment.

I want to be very clear about this. As we say on page 8 of our brief, OSSTA's support for the Fair Tax Commission's model depends on the creation of a residential assessment equalization plan and reform to the system for designating school support.

OSSTA is also deeply concerned about the constitutional implications of losing the right to tax ratepayers. On page 8 and following, there is a lengthy discussion of the constitutional implications of the changes that the Fair Tax Commission's model would bring about. These are set out in detail on page 10 of the brief. Our basic position on the constitution is set out on page 14 in the paragraph following the title. Because the right to tax is



an important protection against less benign provincial governments, OSSTA would oppose its elimination. Instead, we recommend a slightly different approach that has an historical precedent.

Right now, Roman Catholic separate school boards are constitutionally allowed to collect their own taxes, but they don't do so. Instead, they use a municipal collection system because it is cheaper and more efficient. Using a similar approach here, legislation could be enacted giving separate school boards the right to choose between the old model and the new model proposed by the commission. Since the new model would be advantageous to them, without exception they would accept that model and would simply stop using the old model. Constitutional protection would remain.

**Mr Patrick Daly:** We now turn to other matters raised in our brief.

We deal with the funding and use of capital assets on page 15 of the brief. While we support the idea of multipurpose facilities used by a number of different agencies at the same time, we have two concerns. First, such facilities are normally more expensive than standard loan facilities to develop, but the capital grant plan so far does not recognize that. It is a disincentive to cooperation. Second, the control of the siting of schools is of particular importance to Roman Catholic separate school boards and to French-language education. We need to be able to locate our schools where our students live.

We recognize the need for transitional measures, because the changes proposed by the commission are quite far-reaching and profound. On page 17 of our brief, we set out the basic conditions we think must accompany any transitional provisions: that equity should not be postponed; that transitional measures must be efficient; and that there must be immediate remedy for assessment-poor boards in financial difficulty.

One commissioner proposes the coterminous pooling of commercial and industrial assessment as the alternative to a new provincial tax on non-residential assessment. In the past, OSSTA has favoured coterminous pooling as a step to provincial pooling. We prefer the commission's model, but would be prepared to accept coterminous pooling only as a transitional measure. The base, however, must go beyond commercial and industrial assessment to all non-residential assessment. Since it is students who are receiving education, OSSTA recommends that any coterminously pooled assessment revenue be distributed to school boards on an equal per-pupil basis.

We agree with the commission that the right to tax is not synonymous with the right to govern. We agree as well that the democratic accountability of school boards is and should be based on the educational services they deliver.

We do not agree that elimination of the right to tax means that school boards will not be accountable. In truth, most school boards in Ontario, which are heavily grant-dependent, have little real fiscal autonomy and accountability. Only the rich boards, particularly those in Metropolitan Toronto, have any real degree of autonomy.

We also agree with the commission that a system of

school-based management responding directly to a ministry at a central level is not workable in a society that is as geographically spread out and as diverse as Ontario. We insist that regional bodies retain their constitutionally protected identities. There are three reasons for our position, and these are set out clearly on page 21 of the brief.

First, the funding model proposed by the commission does not eliminate competition. So long as competition exists, business functions cannot be merged. Second, since the strategic planning of infrastructure on a regional basis involves the siting of schools, control over the siting of their schools must remain in the hands of minorities. Third, the regional control over educational programs would eliminate curriculum control, which is of course a vital concern to Roman Catholic and francophone minorities.

The commission recommends that the tax-exempt status of charitable organizations, churches and cemeteries be eliminated. We oppose this change. Most Ontarians know the good works that charitable organizations and churches do for the common good. In these difficult times, when money is scarce, it is these charitable organizations and churches that have helped less fortunate Ontarians survive. The addition of a new expense burden must be expected to curtail the number of charitable organizations and churches and therefore to curtail the services they are able to provide. This is not the time to damage the volunteer sector of our society.

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**Mrs Hendriks:** We repeat our clear warning that education financing reform is a matter of utmost urgency. We call upon the provincial government to proceed imminently. The time has come for action.

We would also like to comment on the budget. As you know, we represent assessment-poor school boards. Everywhere in Ontario the counterpart public board is wealthier in terms of assessment. So far, separate school boards have been forced to accommodate reductions in grant funding through cost cutting, both inside and outside of the classroom. These cuts do affect students.

Further reductions in funding will force us to look for savings in our collective agreements. We know the government and the Ministry of Education and Training have been critical of what has been called contract stripping. None of our boards has engaged in that practice. Indeed, our association has encouraged our boards to be sensitive to the impact of the social contract and today's economic realities on their employees and their families. You must understand, however, that we are cut to the bone and we will have no other place to go if there are further grant reductions.

Some of you might ask, why not just raise taxes? The simple answer is that we are not in a position to raise our taxes above those of our wealthier public school board counterparts. Over 75% of our ratepayers do not have children in our schools. If we raise taxes above the public board rates, some of our ratepayers will switch their taxes to support of the public boards, which has counterproductive effect. This simply increases the fundamental inequity.

In July 1992, when education financing reform was just beginning, we filed a brief. The first principle in that brief was that funding for education should be adequate, stable and predictable. We made a comment which is relevant to the process you are engaged in: The need for stability and predictability in funding is obvious. Planning is not possible without them. School boards do not have the fiscal flexibility to deal with abrupt changes in funding policy and grant rates.

For our boards, funding is not adequate and has not been stable or predictable. Some form of longer-term commitment by the government is essential, not only to proper planning of the operation of school systems but also to such basic things as collective bargaining.

Thank you for hearing us. We hope our comments on behalf of the member boards of the Ontario Separate School Trustees' Association will be helpful to you in your deliberations. We're prepared to try to answer questions you might have.

**Mr Phillips:** I appreciate the presentation. At the heart of the Fair Tax Commission report, essentially, is that the province would have the responsibility for raising the money and for setting the school boards' budgets and that then the school boards would have the role of spending in the best possible way. I gather from your report that that's a direction your organization is supportive of.

**Mrs Hendriks:** In general we support the direction of the funding coming from the province. Boards would have the autonomy at the local level to determine how the moneys would be spent, yes.

**Mr Phillips:** But essentially the province would say, "The budget of the Lincoln county separate school board is \$31.5 million," and that would be an acceptable process from the trustee organization's view.

**Mrs Hendriks:** Provided that there is adequate funding to provide for the mandated programs, that would be acceptable.

**Mr Phillips:** That would change considerably the role of the school trustees, but I gather your organization is prepared not only to accept that but to embrace it.

**Mr Daly:** As I said in my comments, I don't think it changes drastically the role of trustees. First and foremost, we should be accountable for the services and programs we provide to students—that's what school boards are there for—and we expect to be judged or held accountable for those reasons. Of course we would still be accountable for the efficient use of the resources provided to us. In reality, very little would change except the generation of the revenue.

**Mr Phillips:** The way the capital now is being handled is that the province has moved to what's called loan-based financing. The province used to provide grants, but now you borrow the money and the province undertakes to repay that over a 20-year period, principal and interest, so the provincial debt's on your books, not on the provincial books. I gather you don't have a problem with that because the province undertakes to repay it, so it's irrelevant to the separate school trustees whatever way it's handled. Is that a fair statement?

**Mrs Hendriks:** We've not had a problem with that. It's our belief that history has shown that this concept has been used in the past, and used successfully.

**Mr Phillips:** I guess the teachers' pension is again not an area you involve yourselves in, but do you ever comment on the teacher pension funding? We think the plan for the province is to take a three-and-a-half-year holiday from making any payments against the unfunded liability and then, when that holiday's over, the combination of the teachers' pension and the public service pension comes in at about \$800 million a year. Has your organization any views on that or is that something you leave to the province?

**Mrs Hendriks:** We haven't discussed this issue at all, so at this point we would not have taken a position on it.

**Mr Phillips:** When the province looks at its funding currently for education, it includes pension payments, but your organization just views that as the responsibility of the province.

**Mr Allan K. McLean (Simcoe East):** What are the three top recommendations from the report of the Fair Tax Commission that you like?

**Mrs Hendriks:** They recognize the inequities in existence across the province and attempt to address those inequities. They focus on the issue of non-residential assessment being pooled provincially and distributed on an equal basis per pupil across the province. I think that's it.

**Mr McLean:** That's two. My colleague has a question, but if you think of another one, let me know.

**Mr Carr:** Mine is along the same lines as Mr Phillips's. I think what the public wants, whether it's in education or health, whether it's division of powers federally and provincially, is clear lines of authority and responsibility.

We've heard from the teachers' union and trustees all saying the province should take more responsibility for funding. I don't think any provincial government, of any political stripe, is going to do that and then allow the trustees to control 80% of the budget through negotiations. Notwithstanding what you said, I believe if they take more of the funding responsibility you essentially are going to put yourselves, in a lot of cases, right out of business. As 80% of the cost is salaries and benefits, I don't want trustees negotiating with teachers if most of the funding comes from the province, and I think no provincial government of any political stripe would.

What is happening in Alberta is that the province has taken over more and more responsibility for funding, but they are also getting rid of school boards. Since this would put a lot of you out of business, I take it you're not in favour of doing what they're doing in Alberta with regard to the education system. I like it. I am in favour of it. I also like province-wide bargaining. That's personal; I'm not even the critic for Education. I'm in favour of what they're doing in a lot of other areas too, as I said this morning, in terms of cuts. I take it you are not, as a group, in favour of what's happening in Alberta, which basically is eliminating a lot of school boards.

**Mrs Hendriks:** Our brief makes it very clear on



pages 18 to 21 what our position is relative to governance. We are not in favour of eliminating school boards and the position of trustee. In terms of the 80% autonomy, or lack thereof, I think it is essential that we look at the existing funding structure. It is clear that for many boards autonomy is not possible. Many of the boards are already grant-dependent to the point of 80%.

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**Mr Carr:** The public is saying that here you are controlling 80% of the cost and that you're not accountable financially. That's where the average public I think is going to have difficulty with the concept. You're saying, "We want to keep our responsibility, but give the financial responsibility to the province." I just don't think the people of this province want that. Some will disagree and say you should keep all the responsibility as trustees. We can disagree on that. I just think if you start getting unclear lines of authority and responsibility, dividing up the financial end from the operations side, the public does not want that. That's why they're very upset with the federal and the provincial government with overlapped powers. Personally, I think what you're proposing is not what the public wants.

**Mr Daly:** I'm not sure I would agree with you that that's what the public wants or doesn't want. In the area of negotiations, a number of the assessment-poor boards and smaller boards have successfully negotiated more cost-effective contracts with their teachers and other federations. I don't think one can assume that provincial negotiations would be more efficient than local. Clearly, negotiations with local units enable boards and federations to meet the needs of the local communities much better than any provincial forum ever could.

**Mr Carr:** That's why the teachers are opposed to it, because they think province-wide bargaining would be tougher. Quite frankly, that's why Alberta's gone to it. As he said in the paper, with a glimmer in his eye, school boards—granted, there are some tough boards, but on the whole, province-wide bargaining would be tougher. That's why the teachers' union doesn't want it.

**Mr Kraemer:** The public we hear from when our galleries are packed is parents coming in to ask the board why we reorganized their school midyear and things like that, why we removed various services. We get very few requests about autonomy. It's: "Why are you reducing these services? Why are you taking these programs away from our kids?"

**Mrs Mathysen:** I'd like to thank the association for presenting this brief. I'll direct my question to Joe Kraemer. You meet with the local MPPs to discuss situations around education, and we met about a month ago and talked about the problem of inequities. You've mentioned it here with the stats, and we know that in London-Middlesex you educate about 25% of the students with 16% of the dollars.

Those figures are telling, but when I met with you, you had a concrete example: two schools built in London, one by the public board, one by the separate board. Could you describe for the committee the disparity between the children educated in the public and the separate systems in terms of the kinds of things they can expect from

support staff, the actual facility, their educational experience and the opportunities—just in a general way; I don't want to put you on the spot.

**Mr Kraemer:** It'll be off the top of my head. We compared a London board school and one run by the London-Middlesex Roman Catholic board. The number of students was roughly equal, but the number of teachers they had was 25, compared to ours at about 15 or 16. We went down through the whole list: resource services, library services. We had about half of those special resources all the way down the list.

In terms of programs: technical programs available to their school for the grade 7s and 8s, we don't have. The cost to build, total cost per square foot, for their school was twice as much as ours. That includes, in addition to the capital, all the other items that enter as capital. There was a list of differences, very clear, and I'd be glad to supply you with that list. I'd just add that the number of dollars raised per mill for our board is less than half of what would be raised by the board of education. That's locally raised dollars.

**Mrs Mathysen:** The point being that children, no matter what system, deserve equality in education.

**Mr Kraemer:** They live in the same neighbourhood and have the same friends.

**Mrs Elinor Caplan (Oriole):** I have a supplementary question if the committee would permit. It's a short one.

**The Chair:** I'm sorry, but our time has expired.

**Mrs Caplan:** Could I just ask for unanimous consent to place the question?

**Mr Wiseman:** Let her ask it. Be quick.

**The Chair:** If committee members are in agreement, by all means.

**Mrs Caplan:** You've described well the educational inputs. I'm interested in any of the comparative outcome information you would have about results from the students in those two situations. If you have that and could make it available for the committee, we'd be really interested in test results, scores, anything where the outcome could be evaluated. I'd be interested in how the students in those two environments compare.

**The Chair:** If you could forward to the clerk any of the information requested by the committee members, it would be appreciated. I want to thank the Ontario Separate School Trustees' Association for making its presentation this afternoon.

**Mrs Hendriks:** Thank you for the opportunity. We look forward to the outcomes.

#### ONTARIO COLLEGE SYSTEM

**The Chair:** The next presentation is by the Ontario Council of Regents for Colleges of Applied Arts and Technology. Some of you are familiar to the committee members, but not everyone, so please identify yourselves for Hansard and the committee members.

**Mr Richard Johnston:** I'm Richard Johnston, the chair of the Council of Regents, the advisory body to the Minister of Education and Training around matters dealing with the colleges. Today we've come in a very unusual and historic way to present to you: We have all



the major stakeholder groups of our system represented here. I'll let them introduce themselves.

**Mr Wayne Phillips:** My name is Wayne Phillips, president of the Ontario Community College Student Parliamentary Association. I'm a student at Georgian College in Barrie.

**Ms Doreen Deluzio:** My name is Doreen Deluzio. I'm chair of the Council of Governors of the Ontario colleges and I'm also chair of the board of governors at Sault College in Sault Ste Marie.

**Mr Dean Barner:** I'm Dean Barner, chair of the faculty division of the Ontario Public Service Employees Union at the colleges.

**Mr Jay Jackson:** I'm Jay Jackson, chair of the OPSEU support staff workers across the province, representing about 6,500 workers.

**Mr Gary Polonsky:** I'm Gary Polonsky, chair of the Council of Presidents and president of Durham College.

**Mr Johnston:** We'd like to take about 15 minutes to make some points. The last two years I've come here, we've made a particular point of not talking about money but talking about vision and where we were trying to go with the system, the reforms that were under way etc. The reason so many of us are today here together, who maybe in a couple of weeks' time on the social contract rebargaining and other things will not be sitting together but across the tables from each other, is that we think we've come to a point in the system where our capacity to reform and our capacity to continue to have as much access as we have had is now in jeopardy, and we wish to present to you to indicate that problem we seem to be facing at this time.

We have not come prepared to talk about the Fair Tax Commission, because we have not tried to produce a consensus position on that. Individuals, if you wish to ask them questions on that, I'm sure would respond according to their own constituencies.

I won't go through the full document—I'll leave that for you to read—but I think the bare facts speak for themselves. Since 1989-90, we have had an increase of 35% in the student body in the colleges. The demand is high. The projection I made last year to you about more and more of our society requiring this level of education to be able to participate in our economy is something the electorate and our students are showing with their feet by coming to the colleges for this kind of upgrade of their education. More and more adults are returning to our system from the workforce.

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At the same time, the drop in funding per student has been particularly difficult: It works out to about a 25% drop during that period. Even when you roll in student fee increases during that period—and the students will tell you they're paying a bigger share now and not sure they're getting the right services—we end up with 18.5% or 20% less money per student to run the colleges than we had a few years ago.

No matter how you look at it, we have shown great efficiency and great effectiveness in making changes to accommodate that and to try to meet the government's

desire for greater access. At the same time, we've taken on probably the most ambitious reform process of any of the levels of education. In the 1991 budget, this government asked us to look at setting standards for the college system. We are well under way now with a standards and accreditation council to establish learning outcomes for generic skills of all our graduates, to look at the general education level of our graduates and to start establishing vocational skill standard levels for all our courses over the next number of years. We also initiated, as you know, the first major system-wide approach to prior learning assessment, a means of trying to assist older workers and others to come back into our system and not have to jump through the kind of hoops they have to in many parts of the education system.

We have at the same time been suffering huge cuts in support from the federal government around the whole training side of what the colleges do outside the post-secondary, and I think Gary Polonsky will speak more to that.

Our point is that we've all been sitting at collaborative tables trying to work our way through these issues for the last couple of years now, and hundreds and hundreds of each of our stakeholder groups are participating together, trying to sort this stuff out. But we are at a stage now where we unanimously come before the committee to say that something has to give: We'll have to slow up on the reforms or we'll have to ease up on the access or we're going to have to start to cut back on quality. It just cannot go any further.

If you look at an even longer-range picture than the tables at the back of the document you have before you show, at the end of the 1970s the relative value of the dollar per student would be \$6,200 per student. It's now, as you see, around \$3,200. That might be an argument to say we were overfunded in those days, but it's certainly also very important to say that we are incredibly lean at the moment.

**Ms Deluzio:** The Council of Governors represents approximately 360 governors at 23 operating colleges, soon to be 25 when our other two francophone colleges come on board. I am here on their behalf, together with our college partners, to tell you that we are concerned about the financial challenges facing the colleges.

The governors are volunteers. We have no vested interest in appearing before you. We are community leaders who believe in colleges, for we know at first hand how much colleges benefit the individual, community and provincial wellbeing of Ontario.

Colleges are trying their best to accommodate all the students who need education, training and retraining in this difficult economy. We have accepted a 35% increase in enrolment while at the same time facing a 20% decrease in funding.

My own college, Sault, for example, has been successful in expanding to meet the needs of the severe restructuring at Algoma Steel. One initiative we have undertaken to help laid-off workers is our agreement with the Canadian steel trades education council, through which 350 post-secondary and 130 adult training students furthered their career education at our college. These



students are receiving valuable training and all the support services Sault College can provide to promote their success, but financial constraints are jeopardizing the college's mandate to provide accessible quality vocational education to people who need it when they need it. Even with college restructuring—and the governors took a lead in this, along with our partners—we don't know how many more students we can serve.

The governors also want you to understand the contribution colleges make to economic development. Again I offer the example of Sault, with the RAPIDS organization now becoming the economic development for the city. We've certainly participated in that. In many communities, particularly in the north, colleges are the engines that drive economic recovery and long-term growth. Northern communities want college programs and services, but these programs and services require your commitment in financing. All colleges want this, and the examples I use could be duplicated in any one of our colleges.

How long can colleges remain accessible, flexible training and education programs for Ontario adults? This is the critical question we are placing before you.

My last point before you hear from our student representative: The people of Ontario agree with the college governors appointed to represent them. A 1993 Ontario Institute for Studies in Education survey shows that Ontario thinks that colleges are doing a good job. Please let us continue to do the job mandated for colleges 27 years ago and so urgent today. The governors hope you will seriously consider the colleges in your funding priorities. Colleges are a critical investment in the future of Ontario. Thank you for listening.

**Mr Wayne Phillips:** Good afternoon, members of the standing committee on finance and economic affairs. I represent the students of Ontario; there are 120,000 students I represent. Our association acronym reads OCCSPA, so when you hear of OCCSPA, that's us, college students.

We primarily focus on key issues that affect students in Ontario colleges. We've recognized an appreciation, though, for student representation on many of the provincial committees and the processes that affect students. This commitment to students is not system-wide, but it is becoming more common in colleges across the province.

I am here today in support of student participation in the various activities in the college system that are supported by the provincial government. OCCSPA's concern for the quality of education delivered in the Ontario colleges does require monitoring of federal and provincial budgeting activity, as most recent trends have been somewhat dismal for the educational institutions. The financial restraints are prohibiting the colleges from implementing many improvements. Although recent initiatives have begun, such as the College Standards and Accreditation Council, that improve the quality of our education, budget cutbacks seem to challenge these advances.

As of now, students are losing support services on campus, we're borrowing more, we're paying more, and we're wondering if we're receiving more or if we're

receiving less. Is it fair to a student if the tuition and ancillary fees skyrocket in a greater proportion than the cost of living, especially after making the commitment to enter post-secondary education?

The colleges should gain recognition as an effective vehicle for economic recovery in our province. After all, the colleges have been an enormous investment by the taxpayers and should be used in training the unemployed. What proportion of the cost of education should a student pay? This question, we believe, will have to wait until a plan of college funding is established and entrenched. The current formula does not allow for consistent calculation of our cost for education.

In the near future, decisions will be made that will affect students in Ontario colleges. We ask that you maintain this government's commitment to the notion of lifelong learning, which will result in a quality education that is accessible and affordable to us.

**Mr Barner:** I'm Dean Barner, a faculty member at Canadore College in North Bay. I'm speaking today on behalf of almost 9,000 college faculty. I've encouraged our members, members of OPSEU, to work with our managements, with our students, with our boards and with our ministry to enhance access and quality with initiatives such as prior learning assessment and college standards and accreditation.

We have even arisen to the challenges of restructuring in the college system as we desperately seek alternatives to provide more efficient and affordable training and education with fewer dollars. Reluctantly, we have taken part in early retirement and leaving schemes for our members in order to alleviate and avoid more painful layoffs. In fact, in this past year alone our OPSEU dues-paying faculty membership has dropped from 9,500 to 8,900; that's 600 jobs lost in one year. Those remaining behind face an increasing number of students and a greater workload.

What really hurts is to realize that we face diminishing returns, that the real loss is not just our members' permanent jobs but the loss to quality education and training for our students. Instead of rewarding our efforts to increase access and curriculum standards, the province has diminished our transfer payments even more. Those are in direct contradiction.

Sadly, our members are now questioning whether working together works. I still hope so. I hope that our coming here together today has an effect on you and on our future in the CAATs. Thank you.

1450

**Mr Jay Jackson:** I'm Jay Jackson, representing support staff workers. For me, these issues of quality and access go back some years. I was fortunate to be one of the two representatives on the group of people who recommended to government how the community colleges should proceed to the year 2000. That was called Vision 2000. From that, clearly access and quality were prime on that recommendation to government.

Today, here in the mid-1990s, as Richard has alluded to, we have over 200 union people speaking on behalf of members across the province on various committees



dealing with such issues as restructuring and dealing with how we can move to a more efficient and better community college system. Again access and quality are prime on our list.

In these times of this Ontario economic crisis, the struggle that is going on with our citizens is being responded to by the community college system. More and more learners are coming into our institutions. More and more of our staff are trying to deal with these challenges. It cannot go on for much longer. Access and quality are clearly up for grabs in this question. We feel it's important that if the government wishes to maintain access and quality to learners in this province, an economic commitment must be present in the formula. Thank you.

**Mr Polonsky:** My name is Gary Polonsky. I'll just take a moment to make four brief points.

The first is that while I am privileged to be part of the shared leadership of my college, and of the college system at the moment, I live very much in the applied world. I spend at least half of my time in the offices of companies and unions and community organizations trying to learn what their needs are so we can respond as quickly and as best we can, so I believe I'm bringing you their perspective this afternoon as well as my own perspective and that of my colleagues.

My second point is that I believe genuinely in my heart that the college system of Ontario represents a huge strategic edge right now for the people of Ontario, for the economy of Ontario. We've always been that through the 1970s and 1980s, but suddenly we're in this new world where knowledge really is driving the economy. Our clients need speed and accountability and quality and to be client-driven and cost-competitive. You know all that. Ontario is almost unique on the planet in having a system which is rooted in the community and at the same time accountable to government so that one can have almost the best of all worlds per the current structure. We are up to this new challenge. Indeed, my point leading into my third point is that we've begun.

I thought I would give you just a handful of examples. Richard in his remarks was focusing on the post-secondary and the full-time daytime diploma part of our programming, which is often deemed the bread and butter. But I'll just leave a number with you for a moment. Durham College has 3,700 post-secondary students by that definition—I'll come back to that number in a moment—and indeed we are shifting quickly in being innovative, as are the other colleges, with that client group.

We have many more special-needs students, for example, who are clients of ours. We are engaging industry so that our graduates, during the summer, are now in summer internships. We have high schools coming on to campuses now for joint credit. We are establishing marketing agencies and other kinds of agencies that are adding value to community non-profit organizations in a way that is a win-win for our students and also for those organizations, so we can add value to them at the same time our students are getting meaningful unpaid work and, in the case of the summer internships, paid work.

We're adding new programs in environmental technology and in business, so our students are learning how to speak Japanese and Spanish and what are the customs in Malaysia. We're learning how to do business over there as well as over here of course so that our companies will be able to expand and add to their market share around the world because we're an exporting nation and, God willing, we'll stay that.

We're engaged in projects such as Canada First, where high schools and companies and the colleges are working with students in teams developing space-age materials, space-age products which some day may find their way into the workplace, into the marketplace, and that's very exciting for us. We're partnering with universities to break down the stupid barriers that have been part of Ontario for decades so that people are part of a seamless continuum, as the deputy likes to call it, which facilitates people going from system to system to system, to the workplace, out of the workplace, on both a full- and part-time basis.

As has already been said, we're doing all that in a way that we've increased our student body by a third at the same time that our revenue per student has declined by half, which is a remarkable example of restructuring, especially if one considers the short period of time in which it has taken place.

Just prior to my concluding point, I'd like to come back to that figure of 3,700 full-time daytime students in Durham and make the point that we have over 37,000 students, in our little college, on the other side of our house: the market-driven, contract training, skills training, working with companies, working with unions, people already in the workplace, people in need of labour adjustment services, where the whole emphasis is on speed, flexibility, response time, accountability—not more so than in the post-secondary sector, but the very fact that the score at Durham is 3,700 to 37,000 helps to give you a feel for how we're responding to these new needs in society.

As one or two of the examples, we're working with local clergy in a number of communities now on the labour adjustment side. The system as a whole has just established Con-nect, which you may have read about recently in the Globe and Mail and the Financial Times. Ontario now has—this will be my last example—for the first time in the history of the province, from Kenora to Cornwall, north to the Arctic, a network of economic development offices dedicated to providing consistent multibranch training throughout the province in a client-driven way.

My concluding point is simply that you have the pledge of all of us that if you continue to demonstrate confidence in this system, which is still young but is restructuring before our very eyes, we really can add value to the developing economy as the world is now defining that economy. Thank you for this opportunity.

**Mr Carr:** Thank you very much, Richard, for a fine presentation and for keeping us informed. Jay, nice to see you again.

I was out to the opening of the Ford plant last Thursday, and when I spoke to the management and the CAW



people out there, they said the biggest single factor in getting this world product mandate, 1,000 new jobs, was the skilled workforce. That's what we do better than anybody. In spite of all our problems with governments at all levels, our people are still our greatest asset. Sheridan played a really strong role in the training, and basically we got the jobs because of the cooperation that was done.

In this era when finances are as tough as they are and you're at the breaking point, do you see in the future some of the colleges getting into working with the private sector, and how much revenue do you think can be generated? In this case, they put numerous people through training and so on. Do you see that as a source of revenue? Obviously, in Ford's case the reason we got 1,000 new jobs was because of the skills and training of the people, which is a tribute to the management and the workers. How far can we go? Have we just touched the surface in that area?

**Mr Johnston:** I think we have just touched the surface, although Gary's already indicated the number of people involved in those kinds of contractual agreements now. This new organization, Con-nect, which includes all the stakeholders at this table, turning the colleges into a proactive economic development network I think has a lot of prospects for attracting dollars. Dean has been involved in a committee working with training for the auto parts sector. If we get more proactive with the 50-odd sectors around the province about how we can do that, I think there are a lot of very positive symbiotic relationships that can be developed.

As well, we probably also need some investment from the government on that side. I'm even thinking about our ability to communicate. What a good place to have a good telecommunications system, the colleges, if you want them to act as a network to support that kind of enterprise. I think there's a good chance of luring in some private enterprise dollars to supplement government dollars for that purpose as well, because it meets all our needs. We see that as very important on this side of what we do.

We continually see a bridge between the training programs we're doing and post-secondary, to get more and more capacity, to get credit for your learning and training applied to your post-secondary diploma. I think that will also be a real value added for the province.

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**Mr Sutherland:** I think we all realize that the college system has done a tremendous job and continues to do a tremendous job. If anything, there's been a great increase in productivity in the college system. You've called for provision of stable funding to the system. We'd like to do that, if the government could be sure we had stable revenues and stable funds. You understand that situation.

Maybe the college system is trying to do too much. Are some of the things it is doing being provided by other agencies, other institutions? Is there a potential to reduce some of those things that other agencies are providing, and would that provide any savings that could go into the other existing programs?

**Mr Johnston:** I think there's lots of room for a range of articulations and rationalizations that could reorganize who does what in training, who does what in education in the province. We have a lot of relationships with the individual boards around articulation and we have a lot with other kinds of groups and organizations. I think OTAB will be very useful, potentially, to us in terms of trying to sort out who should do what. We're actively working on that. Every public agency has to these days just to try to survive in the budget crunches we're facing.

I would throw back your first comments to you. Of course we know there's not much money around, and that's one of the reasons we haven't come sort of mewling and whimpering about our state in the past to this committee. But I do think it is important to invest what you've got wisely, and when I look at the crucial role the colleges play in the economy and education and the reinforcements that can be made there, and at the undereducation of our adult population at the moment in terms of the needs of our economy, it just strikes me as a self-evident place where there needs to be an investment of whatever we have.

It would be a real shame if what happens is that our reforms have to fall off, in terms of how quickly we do them, because we don't have the dollars and that therefore our accountability for standards, which will be a means again of reinforcing business' interest in us, can't be followed. And it would be a terrible shame if people had to be turned away from the colleges at a time when they're coming because they really need exactly the kind of education and training combination we can offer.

Knowing you've got a shrinking pie, I'm just saying it's time to pick some losers and winners in a hard-nosed kind of political way. Unfortunately, I'm coming to you saying that we should be one of the winners, but I think there's a logic to it which is inescapable. We as a system are not the squeaky wheels, unlike my life as an MPP where I was primarily squeaky all the time.

**Mr Chris Stockwell (Etobicoke West):** I was just going to say that.

**Mr Johnston:** And others are now following in that kind of tradition. We've inquired about it. We've gone about our business, and what we're basically saying now is that our business is in some jeopardy if there isn't some recognition of the kind of role that's being played.

**Mrs Caplan:** I'm very supportive of the role the community colleges have played and also the ability of the community colleges to change themselves and be flexible and responsive to not only the changing requirements but also to the community need. I think that's the strength of the community college system, and we've got to be sure that's not lost.

I do agree with you when you say that we have to invest wisely, and I'm very interested in the work you're doing in the area of accountability and standards and linkages and bridging. I think that's outstanding.

A question related to the standards is that you talk about the concern for shrinking quality, and I think we all have to be on guard and very aware of what that means. I'd like to know whether you're doing any kind of



outcome evaluation on the basis of your standard of quality and whether that could be made available to the committee so we could understand what you mean when you talk about the standards by which you are evaluating your student result and the outcome of the dollars, so we can then look at both value for money on behalf of the taxpayers and the quality product you are producing for Ontario to give us the competitive economic advantage. I'm wondering what kind of work you've done as far as educational outcome is concerned.

**Mr Johnston:** We're still very much in the baby-step stages of it. The standards and accreditation council was set up formally last September with equal representation from inside and outside the system. We are now at the point of sending out to the system a paper on guidelines about how to establish learning outcomes and a paper on the level of general education that we think should be expected for our college members.

Yesterday our generic skills council—I'm the acting director of this group at the moment—made further steps to identifying the kind of standards we'd want in five major areas: literacy, numeracy, computer skills, interpersonal skills and critical thinking. We're hoping that within the next couple of months we'll actually have that out to the system, too. But it will be not until this next fall that we actually see how well we can implement that. A real progress report on how we're doing at that stage we'd be happy to send you, but the working document, where we are at the moment and what we're considering, I'd be happy to be made available to any member of the committee who would like that.

**Mrs Caplan:** Just one last supplementary to that: The concern that I have is, how can we talk about decline in quality unless we know where we're at and have something against which to measure that benchmark? I'm becoming more and more convinced that it's not just a question of how much you put into it. Unless you know what you're getting out of it, you won't know whether those tax dollars are being wisely expended and used well, and you can't even answer the question of who should be delivering the service unless you know who can deliver the service best on the basis of results.

**Mr Johnston:** Let me let Gary respond. But one of the things we're trying to move from is the sort of hours-base or input-base side of it to what are the outcomes and what is the profile of the graduate of our system that we want to be able to say to business and to the community we are providing. We are actually going to be at this stage comparing apples and oranges because we're shifting to that kind of accountability from the old curriculum-style approach.

**Mr Polonsky:** Just quickly, I have been lucky to be asked to serve in the National Quality Institute. I'm actually the only post-secondary educator in that institute, and have been learning from the likes of the presidents of GM, IBM, Northern Telecom, Xerox and so on as to how systems which have helped them compete magnificently on the global stage could also be applied to my industry. The good news is that the answer is that there are processes, as part of a mindset, which can make a difference.

As Richard said, we're only beginning to measure on

a system basis, but a number of individual colleges have begun to do so on an organizational basis. There are performance measures such as job placement, client satisfaction ratings, employer satisfaction, advisory committee reports, operational reviews. We have actually gone a long way in the last three to four years to really become a system which has defined accountability and is prepared to stand and be counted on those measures. As we go forward collectively, I think we'll learn from these examples and maybe even be a beacon in this regard in the medium term.

**Mrs Caplan:** That's very exciting. Thank you.

**The Chair:** I'd like to thank the Ontario Council of Regents and the others who are here as well representing colleges of applied arts and technology for making a presentation today.

#### ONTARIO FEDERATION OF AGRICULTURE

**Mr Roger George:** My name is Roger George, the president of the Ontario Federation of Agriculture. I have with me today, Bill Weaver, the vice-president of the Ontario Federation of Agriculture, and Cecil Bradley, our director of research and policy.

Mr Chairman, you have before you a fairly lengthy brief from the OFA. We have no intention of going through it in any great detail, but I would ask that it be tabled for the record so that you can peruse it afterwards. Today I intend to take about 10 minutes to hit some of the high spots and leave members ample chance for questions.

I think the key behind our entire presentation is that we, as farmers, want to work with the government to help to build a business environment under which all small businesses, including farmers and including rural people, can be involved in making our economy grow and thrive and creating some new wealth. And along with that new wealth we believe will come jobs, which in turn will broaden the tax base of the province of Ontario.

Over the next couple of weeks we will be having separate meetings with Premier Rae and his cabinet. That's coming up on February 9 and, again, we'll be meeting with the Finance minister specifically over Fair Tax Commission issues on February 16. Those two points will give us an opportunity to maybe get into more details on some of our rural policies as well as some specifics on the Fair Tax Commission. None the less, having said that, the brief before you today, about 50% of it, does deal with Fair Tax Commission issues which we'll get into later.

#### 1510

We've made in this brief about 19 recommendations, which are summarized at the beginning of the process, and I want to make it clear that our recommendations are spread over many different ministries. We've come to realize in the last three or four years that many of the things that impact upon our industry, upon agriculture, are crossing paths with sister ministries of the Ministry of Agriculture and Food. So I think it's very critical that OFA and other rural organizations continue to have expanded dialogue with ministries such as Natural Resources, Environment, Municipal Affairs, and so on.



If I can quickly hit some of the high spots, if we can move to page 4 of the brief, which deals with agricultural investment performance, the graph, figure 2.2, very clearly shows the reduction in capital expenditure on new plant and equipment in agriculture, and the bottom line with the crosses on it is the increasing expenditure on repairs. Those two lines are almost meeting each other, which is a very ominous sign for our industry; we've pointed this out over the years to government. Clearly there is a need for new capitalization of our existing plant and equipment on the farms, because if we are going to remain competitive we need to modernize our plant and equipment and that extends beyond agriculture, beyond the farm gate, also to the agrifood sector as we face the challenges of new global competition.

We are recommending to the government that it set up a provincial investment tax credit to complement what we hope will be a permanent federal investment tax credit as well.

Moving along to page 6, we talk about the farmers investing in environmental quality and it's very clear from our work we've done already on environmental proactiveness through our farm environmental coalition that many, many farms in our province are going to need to spend significant amounts of money on facilities to ensure that the potential for environmental problems is significantly reduced. The complicating factor for farmers is that many of these investments do not have a return on the bottom line of the balance sheet, while at the same time they do tremendous good for the environment. So we are proposing in this document a combination grant-loan program be established by the province of Ontario to aid farmers in the proactive approach we've already taken to environmental issues.

Chapter 3 on page 8 deals with the tobacco issue. Given the recent events, we feel that the Ontario government has no option other than to re-examine its tobacco taxation policy. If the federal government and other jurisdictions go along with significant reduction in taxation, we feel Ontario has to do that as well. I point out to you once again, and it hardly needs saying, that in Ontario are 1,500 farm families that rely on tobacco, also the start of an industry which accounts for some 50,000 person-years in this province and billions of dollars in the Ontario economy. I'm sure we can have some discussion on this later on, but we are totally supportive of reducing tobacco taxation.

On page 11, on ethanol, we believe very much in value added in our industry. We believe that ethanol is a way to not only add value to our product but also to clear some grains and products off our market. At this point in time, it's a fledgling fuel industry. There have already been some initiatives by the government in funding some feasibility studies and business plans for a couple of cooperatives that are on the drawing board, but we need a long-term commitment from the government of Ontario to ensure that the ethanol component of any ethanol-based gasolines is actually coming from the province of Ontario, meaning jobs in Ontario and value added to our farm product.

On page 13, as an example of where we get into

business with other ministries, the issue of rabies is a very serious one for the farm community and the people of Ontario where we have this new strain of raccoon rabies which is rapidly moving its way north from the United States. We believe the government should pay serious heed to this since the farmers of Ontario and rural people ultimately pay a big cost if rabies gets out of control. We recommend that you set aside sufficient funds for the Ministry of Natural Resources to undertake aerial baiting programs in southern Ontario to bring this under control before it becomes an epidemic. Our brief does point out that it costs the health system \$600 for an adult to go through a series of treatment if they're exposed to rabies. I think that can be avoided if we take some pre-emptive measures early now.

If we move into chapter 6, which essentially deals with the proposals of the Fair Tax Commission, in a nutshell, on the issue of property tax, the OFA is very supportive, as we always have been, of the need to remove the finance requirements of education from the property tax system. To a degree, the Fair Tax Commission sets off in that direction. Having said that, we believe the existing farm property tax rebate program must remain in place until genuine property tax reform has eliminated the need for this rebate program by removing the inequitous municipal education taxation from our farm land. We are not at all convinced that the Fair Tax Commission's proposal to change the method of assessment is going to work, nor is it anything we are particularly looking forward to at this point in time. We can get into some more details on that.

On retail sales tax, we do agree with the Fair Tax Commission's proposal to replace the retail sales tax with a combined national sales tax. We believe that would lower the cost of our production by expanding the base of tax-exempt inputs to include all farm business purchases. It would lower our cost of production by removing the buried retail sales tax in our inputs from our suppliers, and it would certainly simplify and reduce compliance costs by moving to an integrated provincial-national sales tax.

On the taxation of farm wealth, we are totally opposed to a proposal for a wealth tax on transfer of farm properties. We encourage the provincial government not to follow the recommendations of its Fair Tax Commission in pursuing the elimination of the capital gains component, certainly the \$400,000 that's available to small business and farms, particularly at this time when we are going through a major transition and adapting to realities of gas. We again point out that the capital gain that's embedded in some of our farming operations now represents the farmer's only access, in some cases, to a pension plan.

On environmental taxes, on most of the proposals within the Fair Tax Commission, we want to go on record very strongly as objecting to the thrust of the Fair Tax Commission's recommendations in that area. Many of the recommendations have a highly prejudicial impact on farmers and rural Ontario. In many cases—carbon taxes is one of them—we don't have access to alternate forms of fuel on our farms and in our rural areas.



There are other areas in there such as crop protection materials, and again we're totally opposed to taxation on those types of products. In many cases, we prefer to pursue with the federal government and the provincial government access to third-generation plant protection materials, which are available in other jurisdictions and have not yet been licensed. In our mind, taxing current plant protection materials without having access to the latest generation again severely impacts upon the competitiveness of our industry.

In a nutshell, that hits the high spots of our presentation. There's a lot of detail in there, and maybe we could spend our time on questions from the members of the committee.

1520

**Mr Norm Jamison (Norfolk):** Hi, Roger. Thanks for your presentation. In your brief you mentioned the topic of the day, and that is basically the cigarette tax and the tobacco tax issue. I know that a number of us, Paul Klopp and myself, who are here today attended a meeting with the tobacco board a week ago Friday. One thing we realized is how fast that issue has moved and changed, even over the last year. Where last year we were talking about the export of cigarettes and then a good percentage of that returning, now we're looking at manufacturing plants that are at this point unlicensed and so forth and the potential of tobacco being grown beyond that, outside the marketing board system.

As you well know, that poses a great threat to the economy and the wellbeing of the area that I come from. For people's own knowledge at this point, I think it's important to know why that's important at this point, your position there, and of course how quickly the situation has changed and I expect will change as time goes on, again to the detriment of the community.

**Mr George:** Very clearly we're dealing with a legal product here, and as long as it's a legal product, the Ontario Federation of Agriculture will continue to support those farm families that grow it.

I think clearly we've got taxation to a point where the public has revolted against it to the point where not only is it undermining the ability of the government to tax, but I think it's also thrown into question a whole bunch of other things under government's authority. There's no question that this tax has to be reduced and there's no question in my mind that we have to keep the tobacco industry in the province of Ontario because of the phenomenal impact it has not just for tax dollars for the government, but also the economic activity in those areas where it's grown, Mr Jamison's area being the key one.

**Mrs Mathyssen:** I think the OFA has done an excellent job in the past years of bringing the issues to our attention. One thing that I'd like to ask you is about income. I know that the income of a farm family is of tremendous significance. For example, in Middlesex, I think the average income is about \$10,000 per family.

I've been reading the farm papers and there seems to be a divergence of opinion in regard to the latest conclusion to the GATT talks and the loss of marketing boards, article XI. I'm wondering if you could comment

on that and the effect it will have on producers, the loss of their marketing boards: the milk, the egg, the poultry producers.

**Mr George:** First of all, we haven't lost any marketing boards. We've lost our ability to have the import quotas at the border, substituting them with a high tariff. To the extent that the federal government is able to make these high tariffs stick for six years, there will be little immediate impact upon those producers.

Having said that, things are changing. Things are changing within the supply-managed industry. Things are changing in the non-supply-management industries. We have to be looking at other markets, we have to be looking at other value added products, and we have to be broadening some of our thinking.

So things are changing anyway, Ms Mathyssen, and I think regardless of a GATT deal or no GATT deal, things will continue to change. I think the GATT is going to speed them up a bit, but there is a real potential to lose business in the processing sector if we're not very careful. I know the Premier is very anxious about that, so it's going to be important that we maintain this competitiveness for our supply and non-supply farm organizations. That's where, I think, the government can come in and play a major role in getting that economic climate because supply management or non-supply farmers by themselves—none of us is going to survive in this competitive world if we're faced with a playing field that's so severely tilted.

**Mrs Mathyssen:** But the NAFTA agreement—the Americans have already indicated that they won't entertain any new tariffs. Is that not a problem in terms of these tariffs that are supposed to protect producers at the border?

**Mr Cecil Bradley:** I think it's probably presumptuous at the moment where the Canadian and American discussions are going to conclude before April 15, which I believe is the deadline for GATT signatories to accept each other's offers. The US has put a number of issues into play, not the least of which is the durum wheat one, which has very little, if anything, to do with the border protections that might be available for dairy or poultry products.

I think what's going to work out over the next several weeks is a kind of complex negotiation between Canada and the US, which is going to be largely driven by the political pressures in the US. I think the Canadian government has probably got it right when they feel that, with the exception perhaps of yoghurt and ice-cream, they have a very solid position in terms of GATT obligations and that the US may have ranting-and-raving room for their own domestic consumption, but in terms of GATT obligations they really don't have much to stand on.

**Mr Crozier:** Thank you for your submission, Mr George—Roger, if I may, since we've met. I want to thank you also for the new smart telephone card I got as part of my OFA membership because I can now phone home, since I'm in Toronto part of the time, at less cost.

I'd like to go back for a minute to tobacco taxation. I



really need your help here because, as you know, Health Minister Grier has said that cheap cigarettes will result in needless cancers, heart disease, low birth weight of babies and that's too high a price to pay. We have Quebec going to unilaterally reduce their tax rates by the sound of it and the federal government's saying the same thing, if somebody else doesn't do it. We have Mr Laughren suggesting that he wants us to buy cigarettes, but not smoke them, I guess.

Can you help me look at both sides of the coin? You represent the producers and I understand your position, but there's this moral question as well as the economic question, and that's the one many are faced with today.

**Mr George:** As long as we're dealing with a legal product, I don't think Mrs Grier's got a leg to stand on with her argument about the health implications of tobacco. Anyway, she should be also arguing the health implications of eating too much sugar and the cost of obesity. What's the cost of candies for the kids on their dental bills here? Is Mr Laughren going to put taxes on candies? We could say the same thing about eggs, for that matter, with cholesterol. Mrs Grier may be worried about cholesterol. Don't give me the one side on the tobacco and the health issue because if it's that bad, then make it illegal.

1530

**Mr Crozier:** You are saying there's two sides to it, but you're really not suggesting that we make cigarettes illegal?

**Mr George:** No, I'm not. I'm just saying that I don't think you can argue both sides.

**Mr Crozier:** Do you say, though, Roger, there's not a health issue here?

**Mr George:** I'm not suggesting there isn't a health issue, but I'm saying that we shouldn't be linking these things at all. At this point in time we're dealing with a taxation issue and I don't think we're dealing with a health issue.

There are health consequences of lots of things we do in this life. There are probably health consequences from living in Toronto and breathing the air in Toronto, for all I know. There may be health consequences from living by one of these toxic waste sites and by dumps, that's for sure. Let's start looking at that. If Mrs Grier wants to look at health consequences, look at the consequences of burying two million tonnes of garbage. We'll see the health consequences of that 30 years down the road.

**Mr Crozier:** Okay. Thank you.

**Mr McLean:** My first question has to do with farm rebates. The Fair Tax Commission has proposed that the rebate that farmers receive from motor fuels off-road be eliminated. Is there anybody on that committee who's ever been on a farm? They don't know who's paying the cost of growing the food around here. What do you have to say to the Fair Tax Commission? Have you made a report to them with regard to the 100 litres of fuel that you could burn in a day and there's 26-cents-a-litre tax on it? Have you made a presentation to the Fair Tax Commission?

**Mr George:** We made a presentation to the Fair Tax

Commission. They clearly didn't listen to us very well on that particular issue.

**Mr McLean:** Okay. The other issue is the Fair Tax Commission with regard to the carbon component. If they're concerned about the carbon component, why aren't they supporting the ethanol which gets rid of a lot of that in a lot stronger way? Have you made a presentation to the Fair Tax Commission with regard to the use and promotion of ethanol?

**Mr George:** Yes, we did. We mentioned ethanol in our presentation to them on that, yes.

**Mr McLean:** What feedback did you get?

**Mr George:** I don't recall at the time. Obviously they didn't listen as well as they may have done there because we really need some very positive, long-term action on ethanol from both levels of government to make a commitment so we can put these highly capital-intensive plans up. We're looking at several hundred million dollars of investment in an ethanol plant. I want the farmers to have a stake in these ethanol plants and I don't want to see Imperial Oil running the things or, worse still, the ethanol coming in from south of the border.

**Mr McLean:** But don't they have to buy corn for the ethanol?

**Mr George:** Sure, yes.

**Mr McLean:** And you're scared that it may come in from the States?

**Mr George:** No, but I want the farmers to get a piece of the action of ownership in the ethanol plant because, at the end of the day, we're going to be selling our corn—there's no magic to corn going into an ethanol plant as far as price is concerned. It's still going to go in there at \$2.70 a bushel.

**Mr McLean:** There are about 86 service stations in Ontario now. Are the plants big enough or do they need more plants in order to provide the fuel that those stations require?

**Mr Cecil Bradley:** As I understand it, they could source more in Ontario. Yes, there's Ontario consumption that's been sourced out of province or out of country.

**Mr McLean:** Is the government showing any lead in regard to the cooperatives and promoting the further expansion of the facilities to make ethanol plants?

**Mr George:** Mr Buchanan opened the last one in Toronto. I know that much. I think the Ministry of Agriculture and Food is very supportive and I believe, in fairness, the government of Ontario has just announced a \$90,000 grant to the proposed Seaway project, but it needs more than that. We need to get these plants up and running. We need to get the venture capital in place, but we need a long-term commitment on taking the taxation off it to make this thing a viable concern because I don't think we've paid enough attention to the environmental benefits of this thing in the long term. It'll be future generations that will reap the benefit of some bold action today.

**Mr McLean:** Do you think the GST and the PST should be joined as one tax? Would you base the PST on the same broad scope as what the GST is on?

**Mr George:** I think you'd have to, otherwise you're going to get it far too complicated. They've got to be harmonized and made as simple as possible.

**Mr McLean:** I may be not so sure you're quite as clear on it as I thought you may be. I'm saying you would base the provincial sales tax on the same scope as what the GST is based on; that is, your telephone bill, your fuel bills. Are you saying now you want provincial sales tax on the same commodities that they have the GST on?

**Mr Cecil Bradley:** The MTC proposal is that the province move towards the adoption of a multistage sales tax, which is the GST by another name, and at the same time, business, and by that we would take it farm business, be relieved of any tax burden—that they be put in the same position as people are under the GST where they can effectively rebate themselves—and that this be run as an integrated, harmonized system which means one rate, one base and the governments divvy it up in the back room.

**Mr McLean:** But who's going to fill out the forms for the extra?

**Mr Cecil Bradley:** Farmers are filling out forms now for the GST.

**Mr McLean:** I know they are. But are they going to have to fill out an extra one?

**Mr Cecil Bradley:** Not if you've got a harmonized, integrated system. There would be no need for two forms.

**Mr McLean:** The last question I have and it's short: this employer health tax. Do all farmers pay that? How is that based? Is it based on their gross or on their net?

**Mr Cecil Bradley:** I believe at \$40,000 net income it kicks in.

**Mr McLean:** I see. Anybody who makes over \$40,000 net.

**Mr Cecil Bradley:** Yes, that's what I understand.

**Mr McLean:** If they made \$20,000 net, they'd pay it based on \$20,000?

**Mr Cecil Bradley:** No, I don't believe so. The tax doesn't begin to bite until the income exceeds \$40,000.

**The Chair:** I thank the Ontario Federation of Agriculture for its presentation.

#### ONTARIO MINING ASSOCIATION

**Mr Patrick Reid:** I'm Patrick Reid, president of the Ontario Mining Association. With me is Peter McBride, the manager of communications and manager of energy resources for the Ontario Mining Association.

It's interesting that we should be following one of the other major resource industries in Ontario, the agricultural community, because we have a great deal in common in terms of being resource industries. I recently attended a meeting at Queen's Park within the last two weeks in which we heard from the Ministry of Agriculture and Food about its programs and policies within that industry, and we also heard from the people who are in the industry who said very much the same as the mining industry: that they survive and continue to survive in Ontario by being a high-tech industry.

We provided for you a brief document. On the front

page or two we describe the Ontario mining industry in very brief terms. We want to point out that we are a high-tech industry, that our employees are the highest-paid industrial workers in Ontario, and that the mining industry has the most improved safety performance of any sector in the Ontario economy.

However, like many other resource industries in Ontario and Canada, we're under a threat as to our possible survival and our ability to compete and to contribute to the Ontario economy.

The mining industry in Canada came together a year ago and formed the Canadian Mineral Industry Federation, which is an umbrella group whose main objective is to bring to the attention of legislators, regulators and the public at large the importance of mining in Ontario and Canada and to suggest that if all the people involved in the system don't do something about it, we're going to lose this great contributor to the Ontario and Canadian economy.

On pages 2 and 3 you'll see two pages that indicate the state of the mining industry in Canada and suggests a five-point program that industry is prepared to follow and in fact is following, and a five-point program that we recommend for government action.

The request to appear before this committee also included a request to discuss very briefly, as we only can do, the Fair Tax Commission report on Fair Taxation in a Changing World. There are two or three items that are specific to the mining industry mentioned in this report. I'm going to respond to three of them and my colleague Mr McBride, who is an expert on energy matters, particularly hydro, is going to address himself to the carbon tax.

#### 1540

The Fair Tax Commission: I must say I have not had a chance, nor, dare I say, has probably anyone around this table had a chance, to read this tome in great detail, but if you flip through it, I think the whole tone and gist of it is a little frightening in some respects. The philosophy, the outline in which the recommendations and in fact the research that supposedly led to them are of concern. The whole process of going through this exercise indicated that the tax system wasn't fair, and it probably never was and probably never will be, but it seemed to raise a whole bunch of spectres about some people or some industries or some corporations not paying "their fair share."

It's hard to understand the Fair Tax Commission report in its entirety, because there isn't a great deal of philosophical framework that allows you to put the recommendations that ultimately come out against a framework that makes any sense. It's interesting to me that, having read the comments of the people who served on the commission, it looks like there was an awful lot of money and time perhaps spent on this commission that hasn't and may not lead to a great deal of positive things for the Ontario economy.

In any case, the three issues I want to deal with very quickly: The report recommends a cash flow type of tax for economic rent for the mining resource. We think this is an item that is worth pursuing. We'd like to see how



it works out. In fact we'd like to do some economic modelling. We want to put that in the context that in Ontario and Canada generally we have become a less-than-best spot to invest in the world because of the high taxation system we have and because of the increasing number of mandated government costs and their increasing costs of doing business in Ontario and Canada. However, the cash flow concept has been in place in British Columbia and we think this may be something that is worthwhile looking at and we will do so over time. We outline a number of issues that have to be taken into consideration in dealing with this matter.

Two other issues are raised. One in the mining sector is the business relating to mine reclamation funds. It is a legal requirement that mining companies provide reclamation funds to clean up and provide for any work that has to be done once a mine is closed in Ontario. How those funds are treated and how they are provided and how that financial assurance ultimately takes its form is of great concern to the mining industry.

The report does suggest that one of the avenues of financial assurance may be trust funds, that money is put into a trust fund by the mining company to provide for cleanup, that the interest paid on those funds within the trust fund not be taxable and that at the end of the day, when the money has to come out of the fund, it go towards paying the reclamation costs, something akin to an RRSP for retirement, I think a good analogy because a mine has to be retired after it has provided its economic life.

Another item that we are somewhat concerned about and it keeps rearing its head is recommendation 108, the property tax, suggesting that underground mine workings be taxed. We're always a little bewildered what the devil this exactly means. There seems to be some thought that there are underground towns and underground workings in our mines that should be taxed, that if they were on the surface they would be taxed.

The underground workings of mines: Most of the machinery is a crusher that crushes the ore into smaller pieces to allow it to be transported to surface for further milling and refining, there are some maintenance shops for repairing heavy equipment that's underground because it's too expensive and time-consuming to take it to the top, and there are lunch stations and refuse stations. We understand the Ministry of Revenue looked at this matter some years ago and decided that this was a non-issue and we don't quite understand why it has arisen again in the Fair Tax Commission.

I'm going to ask my colleague to comment very briefly on the carbon tax and then I want to make a concluding remark before the questions begin.

**Mr Peter McBride:** We'd just like to use the carbon tax as an example of a suggestion that's not thought through totally and that certainly would increase costs to business in this province.

In the Fair Tax Commission report it was suggested that a \$25-a-tonne carbon tax would be modest and only increase the operating costs of companies from 0.1% to 0.7%.

Because of the energy intensity of mining companies in Ontario, which are, I should add, the most energy-efficient in the world, the actual increase in cost of a \$25-a-tonne carbon tax would be about 0.5% to 1.5%, which would likely double when the inputs have carbon taxes put on them as well, and transportation is included.

The \$25 a tonne may seem modest; the percentages may seem modest. For one of the largest mineral producers in this province that would translate into somewhere between \$10 million and \$15 million a year added cost, which means selling somewhere between four and five million additional pounds of nickel.

Just something to keep in mind is that when you are a commodity producer you can't pass your costs on to your customers; you take what the world price is. There are no other mineral producers in the world who are facing a carbon tax. This basically would needlessly, I think, add to the operating costs of mining companies.

Also, while I look around this room I do see—well, Paul Klopp has left but Kimble Sutherland's there—there are people who have industrial minerals operations in their ridings, but I don't see anybody from northern Ontario. Sometimes in the south we forget one of the incentives of the carbon tax is to get people to switch from higher carbon-content fuels to something deemed preferable, like natural gas. But outside of communities like Sudbury and Timmins, for most mining communities, companies and their employees and the communities they support, natural gas is not available. It's not an option for them. I can assure you in the south you will have people including the Treasurer recognizing that you're penalizing the northern two thirds of the province.

**Mr Reid:** I'd just like to conclude with two comments. Ontario is not the best spot to invest your money in these days. We have a very fragile investment climate in Ontario. I think this budget has to be very supportive of investment in Ontario because we're not going to pay down our debt and we're not going to be able to provide the social services that we want to provide unless we have investment coming into the province or investment coming within the province that already exists, the funds that are already here.

1550

I have to tell you that we are in a very fragile and delicate state, that we aren't a place that people are looking at, because they know that the size of our deficits means increased taxes at some point. I have to tell you that another large burden that we have and are carrying, all of us, is the regulatory climate that we face in this province and in Canada generally. Nobody is asking for unrestricted capitalism or anything else. What we're asking for is reasonable regulation based on some kind of reasonable and known criteria.

In terms of the environment, we're looking for scientifically based regulation and legislation that people can understand and say yes, if we don't get to these limits this will have an effect on the natural ecology or on human health. I have to tell you that the regulatory burden between the province of Ontario and the federal government is discouraging investment in this province, in fact is driving investment out of this province, and if



we don't change that we'll all be back here next year and the years following, saying the situation is even worse.

On that happy note, I conclude.

**Mr Phillips:** Thank you to the group. We've had at least two major business groups in saying to us: "Get rid of the tax expenditure stuff. We don't need any more handouts to business." I'm paraphrasing but I think that's fairly accurate. I'm not exactly sure whether or not they've analysed the whole tax expenditure program when they make that statement. I think there's a certain public appeal to that, by the way—eliminate the tax expenditure, the tax breaks to big business, is the way some of the public like to see it.

What's your feeling on that recommendation and what impact might that have on the mining industry?

**Mr Reid:** Let me start by saying that people always rail against something they think somebody else is getting that helps them out, but just about everybody gets a subsidy of some kind, it seems. The mining industry is not in favour of direct assistance to individual companies. If there are programs to improve the investment climate that are applicable to everybody, then we would consider those. In most cases we're against them. The mining industry has been probably more consistent than most in saying: Don't give any direct assistance to a mining company. If they can't make it on their own or if it's not economically viable, giving them a tax break or a tax expenditure is not going to keep it going in the long run.

Having said that, there are certain occasions, obviously, when somebody needs some help and assistance and might create jobs. So I'm not sure that it's a blanket thing, but I think generally we would agree that tax expenditures of that kind should be done away with.

**Mr Phillips:** The reason I raise it is because I think there's a lot of interest in it. I look at the Fair Tax Commission report of the direct Ontario tax subsidies to business activities, the tax expenditures. A fair number of them are in the resource mining industry, at least as they define them: the exploration and development expense, the new mines tax exemption, the \$500,000 mining profits tax exemption—oh, that's no longer applicable, I guess. But I'm just saying that when they talk about tax expenditures, they may not be using the same definition you might use.

**Mr Reid:** No, I don't think they are. I think the Fair Tax Commission basically started from the view that there's a whole bunch of people, whoever they are, ripping off the system. I don't agree with that. Over the years, the tax system has been built up willy-nilly to attract investment of one kind or another, whether in the mining business or something else, to Ontario, to create jobs. Basic economics don't change. The change came up with the investment function. That still exists and it's still there.

**Mr Phillips:** I guess my advice is for your organization to keep an eye on this area because I think there was an intense interest without necessarily understanding what's really meant when you say, "Get rid of tax expenditure programs."

**Mr Reid:** I would agree with you, because what we

all have to be careful of is presuming that everyone is monolithic, that all business is business; all industry is industry. Mining is quite different from forestry, from agriculture, from making widgets, to a whole lot of other things. One of the things in mining is that it's a very highly capital-intensive business that takes a lot of money, anywhere from \$50 million to \$400 million, to open a mine, never mind the millions you spend on finding it.

If you want that kind of investment in your province, there may be things that you're going to have to do that are a little different for mining. To take one template and apply it to all is not going to work. That's one of the problems I have with the Fair Tax Commission. I think it's pretty simplistic. If you want to argue about the Carter commission, I thought that was simplistic. A buck is not a buck; you earn a buck in different ways. It's called "risk." As a businessman, you will have remembered that concept.

**Mr McLean:** Welcome, Pat; good to see you again. The first question I have is with regard to the tax exemption for underground that the Fair Tax Commission is interested in imposing. What type of a tax would that raise in the average mine in northern Ontario?

**Mr Reid:** I can't answer that because one of the problems with the Fair Tax Commission is that it doesn't give you any numbers, generally. They have some lovely charts, but they don't really do any financial analysis of how any of this is going to impact on an individual or a company or corporation.

As I said, all that is underground is a rock crusher which bangs the rocks together so that they're in smaller pieces and can go up to the surface. There are some lunch areas that have stuff sprayed on the wall and they have some timber around and they have a washroom and chairs and tables, and they have maintenance areas where they fix the vehicles that work underground.

**Mr McLean:** Why would they make a recommendation such as this?

**Mr Reid:** I have no idea.

**Mr McLean:** Have they visited any mines that you're aware of?

**Mr Reid:** Not that I know of, no.

**Mr McLean:** The other question I have is with regard to the corporate tax. How is that going to affect the corporations?

**Mr Reid:** It's another way of discouraging investment in Ontario. The corporate tax—I presume you mean the minimum corporate tax—is just going to discourage investment and job creation in Ontario. I'm not quite sure. It sounds good and it sounds logical until you start looking at it, but unless people make money, they're not going to invest and they're not going to create jobs. If they aren't, they're playing under the rules of the game. It seems to be another way of harassing people and saying, "If you're in business, if you're trying to do something, then you're going to pay for it, one way or the other."

1600

**Mr McLean:** Hydro was always one of the major



issues with the mining association, the increases that were substantial over the years. Have they been frozen the last year or are they still prohibitive in the business of mining?

**Mr Reid:** I'll ask my colleague to respond to that, but before he does I want to make this point, that you can't always directly relate A to B, but we basically have come up with a figure of about \$65,000, that when the cost to a mining company rises by \$65,000 somebody loses his job. We've lost a lot of people as a result of government-mandated costs. My colleague here will tell you what hydro increases have done in the last three years. The fact that we've lost a lot of jobs isn't necessarily all related to increasing hydro costs but certainly there is a correlation between jobs lost and cost of hydro and other government costs.

**Mr McBride:** The good news for all ratepayers of Ontario Hydro is that there is no increase in 1994, which is obviously welcome to an energy-intensive industry like mining, the industry that was still reeling under what we've all faced, the 30%-plus increase over the previous three years. Ontario Hydro has gone from being very competitive and attractive to, next to Nova Scotia and PEI, the highest-cost producer of electricity in Canada. I think, without looking at what electricity costs beyond our borders—beyond Ontario the two main mining provinces are Quebec and British Columbia, and Manitoba and Saskatchewan follow beyond that. They all have much cheaper electricity rates for home owners and industry than you can find in Ontario. Our best hope is to try to keep rates at 0% or minimal increase over the next few years. We're working with Ontario Hydro on their rate structure advisory committee to try to give some other options to industry, to hopefully restore our electrical utility to a competitive position.

**Mr Sutherland:** I just want to make a couple of comments. First of all, the chair of the Fair Tax Commission was before the committee yesterday to answer some questions and very clearly outlined what its mandate was and that the objective of its goals was to be revenue-neutral while trying to find a fair taxation system. She did make some comments on the carbon tax, and you may want to get copies of the Hansard just to hear her comments in terms of what the intent was there. Other than those comments, while I have the quarries in my riding and have some understanding of them, I don't really claim to be an expert on mining issues. I don't have any other questions. I think Mr Wiseman does.

**Mr Wiseman:** I was reading through your excerpt. I wasn't here for the presentation but I read through it. You make a comment about Central and South America being the new attractive locations for mines. My understanding is that's not coming at no environmental cost, because they don't have in Peru or in Central America some of the laws concerning environmental protection that we have here; their problems are just beginning. I'm interested in this one bullet point here where you say, "Implement a new verifiable environmental management system." How do you propose to do that and how are you going to balance the needs of protecting the environment with creating a sustainable industry in mining?

**Mr Reid:** I'm glad you asked that question. First of all, I want to make it very clear that mining companies aren't going to South America to avoid their environmental responsibilities. We have an environmental policy statement that says that our Canadian companies, pretty well all of whom are members of the Ontario Mining Association, will apply Canadian standards, where they're reasonable, wherever they go in the world. They're not going down there to take advantage of looser or laxer environmental laws. What we mean by the comment you pointed out is that we will have best management practices to apply to environmental aspects of mining. I think that mining has come a long way in the last number of years in proving itself environmentally responsible and knowledgeable. We've still got some problems, all of which we haven't solved, but we're sure working on them.

One of our major concerns, I have to tell you—and we have Mr Lessard here, who spoke at the mineral symposium in December—is what the municipal-industrial strategy for abatement program is going to do. We've been involved in a six-year program with the Ministry of Environment and Energy and we've been sandbagged, we feel, at the end of the process. We spent six years trying to come to a reasonable, sustainable economic approach to mining in Ontario, and after six years, when everybody agreed that this was the way it was, it appears that things are going to be changed arbitrarily by the Ministry of Environment and the people within it.

If you think that's going to attract investment to Ontario in mining, or anywhere else, you're sadly mistaken. Six years of consultation and, willy-nilly, things are changed. That's not sustainable economic—

**Mr Wiseman:** In reference to that, we know now that the toxicity levels of the Great Lakes is increasing, and not in controllable issues like phosphates but in the chemical balance. My concern, given that both my communities drink the water from Lake Ontario, is that it already has traces of tritium in it from the nuclear power plant—that is a debate all in itself—and is also at the other end of a sewage pipe, which is another debate all in itself.

We have to be very careful that we do not allow the levels of toxicity to increase to such a level, with chemicals and bacteria, that it can't sustain itself and that we can't filter it out. Quite frankly, I think we're getting awfully close to that. While this may sound heretical to you, if adding another mine is going to tip the balance against having a sustainable environment, then I may not be in favour of having another mine.

**Mr Reid:** Mr Wiseman, I can't think of anybody, including the people in the mining industry, who would disagree with what you just said. But I think we have to have reasonable evidence, reasonable data, we have to know what impact everything is having on our environment, and then we make a reasonable decision. But we have to have it done on some kind of scientific, reasonable, rational basis. Nobody would disagree with that. We would not open a mine if it was going to cause those kinds of problems.

But I ask you this question: You mentioned the end of



a sewer. There's something called the municipal-industrial strategy for abatement. Industry is being told, "Thou shalt do this; thou shalt do that," sometimes with no scientific proof or any indication that it's having an effect on human health or air, water or whatever.

We're waiting to see what the government of the day is going to do about municipalities and their sewage systems, because the sewage systems in this province are awful. The only reason the government, in my personal view, has not done something about it is because the cost of doing something about municipal sewage and waterworks is in the billions and billions of dollars.

There's a large amount of hypocrisy involved in saying, "You industry, whoever you are, shall do this, but by the way you municipalities, because we've got a tax problem here, don't have to do anything."

**Mr Wiseman:** I agree with you on the latter part.

**Mr Reid:** I hope you'll talk to Mr Lessard. I'm sure he'd be interested in your views.

**Mr Wiseman:** We do. But I just wanted to hear about this environmental management system, because there are some very creative things being created.

I was reading in one of the geographic magazines, and I hope that the kind of environmental degradation that's taking place in the Yukon around the technology for spraying whole mountainsides and having the dirt come down and looking for flake gold and for gold is not going to be the kind of thing that will continue.

**Mr Reid:** I must confess I don't know anything about that, but I can assure you there's no placer mining in Ontario.

**Mr Wiseman:** I was reading about the Yukon, and when you go back to looking at what happened at the turn of the century, it still hasn't healed. That's still a scar.

**Mr Reid:** I know, but we did all kinds of things years ago.

**Mr Wiseman:** But there's still an argument it's happening in the inside of Brazil, and somewhere in the neighbourhood of thousands of natives are being used as slaves and have been killed.

**The Chair:** Mr Wiseman, our time has expired.

I thank the Ontario Mining Association for its presentation.

At this point in time, I believe the committee members understand that it won't be until 4:30 that ministry officials will be here. Therefore, we will recess until 4:30.

*The committee recessed from 1611 to 1631.*

#### MINISTRY OF FINANCE

**The Chair:** I would like to make a request of the Ministry of Finance officials. Are all the necessary people here at this point in time?

**Mr Phillips:** We wouldn't know.

**The Chair:** The committee members wouldn't know, most certainly. There are still others on their way? Okay.

Anyway, I would ask the ministry officials to please make themselves as comfortable as they can. I want to

thank the ministry officials for returning to the committee for some further questioning. As I understand it, most of the questions will be initiated by Mr Phillips.

**Mr Phillips:** Smoke me out.

**Mr Jay Kaufman:** I thought we'd dealt with most of them in our other hour and a half with you, Gerry.

**Mrs Caplan:** But now we'd like the answers.

**Mr Kaufman:** You expect that from me, do you?

**The Chair:** Just before we start, for the committee members, we have Steve Dorey, Jay Kaufman and Peter Warrian. I think that Hansard understood my explanation of who our representatives are here, and I think the committee members know that. So I guess we can proceed, and we'll turn it over to you, Mr Phillips.

**Mr Phillips:** I appreciate the ministry staff being here and being helpful. I did, at their invitation, have a chance to talk with them, and I think all the information I got was submitted to the committee.

As I think the ministry staff know, tomorrow we start trying to write the report, and then we theoretically are supposed to finish it on Thursday. I'm feeling frankly a little bit naked in terms of knowing, other than some preliminary revenue estimates, where we are on some of the other areas. You may not be able to be helpful, but it's going to create a bit of a problem, I think, for us trying to, as a legislative committee, comment on the 1994-95 budget without some of the data I think we could use.

On the expenditure side, I realize that you're just getting into kind of the review and all that sort of stuff, but I'm going to make the assumption that nothing significant has changed with your previous forecast that you had a year ago on the \$42.6-billion budget estimate. When I say "significant," you in your report to us on January 19 indicated there are some expenditure—what do call them?—pressures, and I don't mean to say \$300 million is not significant, but they were not huge spending pressures. So I'm assuming that we're not far out of whack on something for 1994-95 in the \$43-billion range for operating expenditures.

**Mr Kaufman:** There's no question at this juncture the reason we put those numbers in there is that we wanted to signal to you as a committee that we're still experiencing cost pressures. Your first point—we haven't as yet got all our estimates in, so we're not able to roll it up in the way we did last year, but I don't want to underplay the fact that we've got some tough expenditure decisions to make in order to get our numbers down on that expenditure track that we put into last year's budget.

So \$300 million I think is probably a low estimate. Typically, ministries come in with a fairly long list of pressures, as you know. We have a process in place, a corporate process, taking a hard look at our programs and our spending, and we do expect to be making some tough expenditure decisions to try and make those expenditure targets.

**Mr Phillips:** Right. But on the evidence we've had in the last couple of weeks from, as we say, the transfer payment people, I think they sound to me like they're prepared to live with the estimates that were given to



them when this budget was prepared.

**Mr Kaufman:** I think that you're well aware, as everyone is, that we're waiting on a federal budget. They've got some major decisions to make with respect to transfers to provinces and there's no question that we're going to have to assess our position after having seen the federal budget.

We won't be making, for example, any major transfers decisions, final decisions, until after we've seen the federal budget, because, as you know, there has been a lot of speculation about freezes and cuts and so on. We simply don't have the amount of certainty at this stage to know whether the plan of last year is still on.

**Mr Phillips:** And what was the plan of last year for federal transfers for 1994-95?

**Mr Kaufman:** We assume that the current programs, the cap on CAP and the freeze on equalization on a per capita basis, would stay intact for this coming year. Those numbers from last year assume that. The speculation has been, as you know, that there may be a freeze on federal transfers.

Now there are different ways that freeze could impact on Ontario. If it were a freeze on a total budget line, we benefit by having a freeze on a per capita basis because we have population growth. If they froze differently, it would cost us—I think our estimates potentially are in the order of \$100 million. If they froze the CAP, then the number gets a lot higher, quite frankly.

**Mr Phillips:** Okay, but that's kind of on the revenue side. On the expenditure side, there's nothing other than the pressures here that you've outlined that should be a major cause for concern for the committee in terms of those.

**Mr Kaufman:** No. I think if you're looking at drugs, you're looking at student assistance, you're looking at legal aid, you're looking at OHIP, I mean, you're looking at the traditional—the traditional cost drivers, despite the fact that we've brought them down dramatically, remain pressure points for us. We're not seeing, for example, case load declines yet in social assistance; we're still seeing case load increases. That's why we're flagging those as pressures to you.

1640

**Mr Phillips:** Okay. In the absence of anything else, I'm leaving with the assumption that the \$42.6 billion may drift up but not significantly.

On the public debt interest costs, you had \$8 billion in. Is it fair to assume that we are doing better on debt-servicing costs than we thought a year ago?

**Mr Kaufman:** John Madden's here and he can give us that. Our current projections are that we're roughly at those kinds of levels. As you know, and John will get into this in more detail, in order to protect our financial position, we look at long-term borrowing as opposed to short-term borrowing and exposing ourselves to fluctuations. So those numbers are pretty much on the mark as far as our current estimates are concerned.

**Mr John Madden:** I think it's fair to say that they're pretty well on the mark because we have done a high proportion of our funding in the fixed-rate markets in the

long end because we think it's a particularly opportune time to do that. While we might look at short-term costs in terms of reflecting upon how much the provincial PDI would decline because of that, one should not focus on that because we haven't done a great deal there. We've done a little bit more but not a great deal, because about 6% of our debt is floating and most of it's fixed.

There may be some benefit if rates continue to decline, particularly in the long end, more we than we anticipate, but that's not anticipated at the moment in any sort of significant way. It should be around that margin as it stands right now, Gerry.

**Mr Phillips:** I gather that with the Ontario Financing Authority you'll also be loaning money to municipalities and what not and charging a fee for that, but is the \$8-billion public debt interest solely the interest charge against what debt?

**Mr Madden:** Against the, approximately—I just don't have the numbers in front of me here—about \$77 billion in external debt at the moment in terms of public debt and also non-public debt from the pension funds and the like. That's how the public debt interest number is projected.

**Mr Phillips:** Would you charge for any of the funds that are in the Ontario Financing Authority that aren't part of the provincial purpose debt?

**Mr Madden:** You mean in terms of the funds that are on lend to corporations and the like?

**Mr Phillips:** Yes.

**Mr Madden:** Yes, that would be charged, but in terms of next year, that's not a real big significant number at this juncture. That would be included in the estimates.

**Mr Phillips:** Yes.

**Mr Madden:** And it would be the average, Gerry. It would be the average over a period of time. It could be that some of those folks just went short, elected to take floating rate money. Don't forget some of that money will be taken out, depending on the corporations, by external revenue sources that are coming to those corporations.

**Mr Phillips:** I see this year we've taken our cash position up by about \$1 billion over what we thought we would be, I gather, in 1993-94.

**Mr Madden:** Which numbers are you referring to? I'm sorry. I don't have that in front of me.

**Mr Phillips:** The third-quarter results. I think that's the number.

**Mr Madden:** I don't have it in front of me.

**Mr Phillips:** And last year, I think, we took it up over what we actually needed by a couple of billions. Is that a fair statement?

**Mr Madden:** In terms of cash on the balance sheet?

**Mr Phillips:** Yes.

**Mr Madden:** Generally it depends on the timing of the borrowings, when these things are put out, but generally we like to stay one quarter ahead in our funding. I'm just looking here.

**Mr Phillips:** I told you about this, didn't I?

**Mr Madden:** An increase of \$1 billion; oh, \$1.339 billion. Okay. I guess I have to look back and see what the time in the borrowings is. It could be just simply the timing of the borrowing. We borrow at the most opportune time, but we have several billions in the kitty right now prior to budget blackout season to deal with cash outflows that we have during that period.

**Mr Phillips:** I think you're borrowing really well, from what I understand.

**Mr Kaufman:** They like us anyway.

**Mr Madden:** For example, we just borrowed upwards of \$4 billion this week at very favourable rates, and that will be used to fund cash outflows during the budget blackout period, which we otherwise can't fund during those periods.

**Mr Phillips:** I accept that. I'm trying in my own mind to figure out the capital corporations and the public debt interest and what is actually attributable to the budget and then how the interest charges and the capital corporations will be handled. My own instincts are that it will be in the budget a little bit lower than the \$8 billion, just because I think we're borrowing better than that and we blah blah blah.

**Mr Kaufman:** I think that's a reasonable assumption.

**Mr Madden:** Don't forget that a lot of the debt isn't rolling over. We've got about \$1 billion refinancing, so it isn't a huge number. A lot of it's locked in. Just so you get that.

**Mr Phillips:** I know, John. You'll look good anyway. I know how tough it is.

**Mr Madden:** Tell these guys, Gerry.

**Mr Phillips:** I don't mean to steal your thunder.

On the capital expenditure one, my sense is, and check me if I'm wrong here, that you're moving more as a percentage off-book than you had planned. I only base that on the basis of what I see occurring year to date in 1993-94, and I see the loan-based financing. You're moving some stuff into Culture, Tourism and Recreation. Virtually all of the cuts in the capital were in the on-book capital and the rest was all in the off-book capital. My sense is that the capital expenditure of the 2.7 that you'd planned may be a tad lower, but the total capital expenditures I gather are still going to be in the 3.9 range.

**Mr Kaufman:** No. Total capital spending is likely to be around the 3.6 number.

**Mr Phillips:** Next year?

**Mr Kaufman:** Oh, sorry, next year?

**Mr Phillips:** Yes. All this is 1994-95.

**Mr Kaufman:** Oh, sorry. I thought you were talking about this year.

**Mr Phillips:** No. I'm sorry. The \$8 billion is 1994-95 on debt servicing.

**Mr Kaufman:** We have yet to finalize or put to bed our capital program. I would expect to see the total capital program that we ultimately decide on in that ballpark. I think one of the things we are trying to do on capital is, as you've noted publicly, we have been

allocating about 3.9 and coming in for two years on the order of 3.6 or thereabouts. One of the factors in that has been simply the fact that we've got prices substantially coming in a lot lower than we'd expected and normal kinds of delays.

One of the things we're trying to do is to get our capital cash flow much tighter in terms of the actual allocations, so we're not ending up with allocating a lot more than we know we're going to spend. That's a hard one to deal with. Whether we're actually at 3.9 or somewhat below that, I expect we'll be a little bit below that before all is said and done in terms of our level of spending, but the total spending will be up in that range I expect.

**Mr Phillips:** In 1994-95.

**Mr Kaufman:** Yes.

**Mr Phillips:** I don't know how you want to run this, Mr Chairman.

**The Chair:** We're going to be coming up to 20 minutes in about three or four minutes. Mr Carr may have some questions. The government caucus has chosen not to ask any questions, as you know.

**Mr Carr:** I don't have many. Just a few.

**Mr Kaufman:** We had expected to be here for about half an hour. We've probably got a few more minutes than that. How long did you want us to be here?

**The Chair:** Not much longer than that, I don't think. The government gave up its opportunity to ask questions so that you could get out a little earlier.

**Mr Kaufman:** To my next meeting. Thank you.

**Mr Phillips:** Normally, the only thing that stops one meeting around here is the start of another.

**Ms Christel Haeck (St Catharines-Brock):** A good observation.

**Mr Phillips:** Flipping to the revenue side for a minute, I appreciate that you've given the committee what's called the medium-term revenue outlook. I think we all have this copy and I found it useful. Can you just refresh my memory? I think the Minister of Finance gave us the reasons for the \$1.6-billion shortfall, and I'm sure they're in Hansard, but just what were they versus your expectations?

**Mr Kaufman:** Pat Deutscher is the head of our revenue forecasting group. Why don't you take that one, Pat.

**Mr Pat Deutscher:** I don't have the specific breakdown in front of me, but a large part of the revenue shortfall flows from the 1992 PIT returns as processed by the federal government. We found out that we had been overpaid by more than we had anticipated at the time we put together this forecast previous to the last budget. That both lowered the base for growth of PIT revenues and meant that in 1994-95 we have to repay more to the federal government than we had thought.

For next year, about 0.8 billion of the 1.6, about half of it, comes from the PIT shortfall. It's about half the annualization of the weaker position in 1992. The other half is additional repayments to the federal government that will have to be made.



**Mr Phillips:** So \$800 million was shortfall in personal income tax, half being the repayment and half being—

**Mr Deutscher:** That's right. Then we're looking at about \$300 million less than we'd anticipated in corporation income tax, roughly \$100 million less on the retail sales tax next year. We're looking at roughly \$100 million lower on EPF payments based on the downward revision to Ontario's population relative to what we thought it was at the time of the last forecast. Those are the major factors. There's another \$300 million that comes largely from the other tax revenues. So it's really largely an extrapolation of the slower-than-expected economic recovery in 1993.

1650

**Mr Phillips:** On the federal transfer payments, you still have the same number in there as you had in your estimate last year.

**Mr Deutscher:** Overall, that's a major factor that plays into that number, but the basic assumption that's built into the forecast is a continuation of the current rules. There's some impact on EPF, on the cash portion of the EPF payments that results from the change on personal income tax, so there may be some differences in the numbers at a minor level, but I would have to really dig in to see what they were. They don't add up to very much difference in this forecast compared to the budget forecast.

**Mr Phillips:** Because I've now got taxation at 33.2, other revenue for 1994-95, to get to your 44.9.

**Mr Deutscher:** Can I borrow back my—

**Mr Kaufman:** Basically, federal transfers are non-tax revenue. Two other clumps make up the difference.

**Mr Phillips:** Yes, but how are they split?

**Mr Kaufman:** Just off the top, I think the federal transfers are about—correct me if I'm wrong here—\$7 billion: 6, 7, 8, something in that order. We'll get that for you. That's the ballpark, as I recall.

**Mr Phillips:** So I guess I just subtract the 33.2 plus the 7.6, which I think is 40.8, from the 44.9, and I get other revenue of 4.1. Is that a fair way of doing it?

**Mr Kaufman:** Yes. I would want to get back to you on the specifics. I think, as I say, it's in the \$7.5 billion range, our federal transfer, so that math is probably roughly right, but I'd want to get back to you with something more specific than that.

**Mr Phillips:** Because that looks like about a \$900-million drop in other revenue then from this year.

**Mr Deutscher:** Again, there are a lot of asset sales that are included in this year's projection. There's the GO refinancing, there's the SkyDome, the Suncor sale that's already happened, so those are not factors in the projection for 1994-95.

**Mr Phillips:** Right. So we had a billion dollars of asset sales this year, and I think you told me in the briefing that you figured maybe \$500 million this year, 1994-95.

**Mr Kaufman:** Yes, in that range.

**Mr Phillips:** Then I'm just surprised the other

revenue dropped so much, because I think we've got the cash machines in there and the casino lotteries that are new—the photo-radar cash machines. Am I right? Do those things generate—

**Mr Kaufman:** I haven't seen any cash yet, so I'm still looking for it.

**Mr Phillips:** They generate \$15 million each year?

**Mr Carr:** Your eyes are lighting up.

**Dr Peter Warrian:** Four machines were intended to make about \$60 million.

**Mr Phillips:** How much?

**Dr Warrian:** Four machines were going to make about 60. It wasn't necessarily 15 per machine; it depends on where you stick them.

**Mr Phillips:** I tend to just average them. There may be one making \$50 million. I want that franchise. I appreciate it's four getting 60.

**The Chair:** Any comments made that aren't made in the mike wouldn't be picked up by Hansard so if someone sitting in that chair would like to repeat that comment, otherwise, it won't be noted or may not be noted accurately.

Did I hear that correctly that four machines produced \$60 million?

**Mr Phillips:** It was a voice from the back of the room. It's not \$15 million per machine. It's four machines produce \$60 million.

**The Chair:** I see, and that's better than slot machines.

**Mr Phillips:** The only reason I raise that is—

**Mrs Caplan:** Is that what they mean by video lottery terminals?

**Mr Kaufman:** It's something different. Go to your local bar, you can check it out.

With respect to the casino and the revenue there, I don't have the exact projection, but it's the interim casino. We're not talking about the full board casino. We're expecting that to be pretty much a 12-month revenue gain. The target right now is to have that open in mid-April.

Again, we can get our specific forecast on that number because we do have that. I don't have it with me but we can certainly get that.

**Mr Phillips:** What I'm trying to do is get some feeling of—

**Mr Kaufman:** The big drop is, as I said, in things like GO and so on and on the non-tax revenue initiatives that the major ones, which would be the casino coming on, a lot of the other ones are just getting going. For example, you mentioned photo-radar. We're going to do pilots. It's not clear at this point in time how much money we're actually going to raise next year as a result of those pilots, and where we go with it.

It'll take some time before we see the non-tax revenue piece grow as dramatically as people have been forecasting. It's really I think 1995-96 before we see the full impact of the non-tax revenue measures we've announced at this stage.

**Mr Phillips:** Right. I appreciate that. As I say, it

would be useful I think, to me at least, to see how those two things split, the federal revenues and the other revenues, because we put so much focus on other revenue, and I gather you are still looking at things like, say, a leaseback on airplanes and what not, that aren't currently in there.

**Mr Kaufman:** Yes, and to be quite candid about it, we're also looking very extensively at additional non-tax revenue sources. Our view is that Ontario generally, compared to other jurisdictions, has not utilized the non-tax revenue source as much, and we do anticipate moving ahead with additional non-tax revenue moves.

**The Chair:** Mr Phillips, I just want to let you know that it's very close to 5 o'clock. I'm sure you're looking at your watch there and are aware of that anyway.

**Mr Phillips:** I wasn't.

**The Chair:** Mr Carr indicated that he wanted to maybe pose a question or two.

**Mrs Caplan:** The question that I have on the revenue side is, in your forecasting, since we know that the economic recovery that's taking place is not resulting in more jobs being created, that's rather slow, the forecasts on personal income tax increases, I would imagine, are therefore lower than increases that you would find from corporate tax or sales tax. I'm just wondering at what rate of growth you are forecasting increases in those revenues as compared to personal income tax.

**Mr Deutscher:** Are you talking in terms of 1994-95? That's correct. Personal income tax, in terms of our cash flow, does come back a little bit faster than retail sales tax because of this repayment to the federal government, but we're looking at growth of just under 7% for personal income tax. For the retail sales tax, it's about 5.7%, and for corporation taxes, the rebound is 16%. The growth rate of corporation profits that we're forecasting is much higher than that, so the buildup of losses in the past is going to drag down the growth of revenue that results.

1700

**Mrs Caplan:** What you're anticipating will be write-off of past losses on the corporate side, but you're still anticipating that the corporate profits overall—you'll be up about, did you say, 16%?

**Mr Deutscher:** That's the forecast for next year, that's right. For this year, we're looking at growth of about 7%. Partly these are budget measures that we've put into place: the corporate minimum tax and closing of some loopholes. That builds up and helps shore up the growth next year.

**Mrs Caplan:** The question I have is why you're forecasting a lower revenue increase in the sales tax rather than the personal income tax, since there doesn't seem to be any evidence overall that the personal income tax is where you'd see growth. I would think it would be sales tax if it was a consumer—

**Mr Deutscher:** Again, it's partly the budget measures, because we've essentially had a full year of the impact of the PIT measures that were introduced in the last budget. That doesn't play into growth in 1994-95, whereas we'll have a full year of the base-broadening measures that applied to the retail sales tax. You're probably quite right

that if we took out the impact of putting the tax on insurance, this would change the way you'd rank those.

**Mr Kaufman:** The point being that RST would not be growing as rapidly as we have in the forecast because of the base-broadening. The other thing to keep in mind is that when you look at the PIT versus the corporate side, the corporate side is coming from such a low base. It dropped very, very dramatically, as you know, whereas PIT has dropped but nothing like the dimensions of the drop in corporate. When you get a 16% growth on the corporate, it's from a very low base.

**Mrs Caplan:** The other question I have is, given the large number of people in the province without jobs and the number of people that are not even looking—if you add the two together, I think it's around 14% as a real unemployment number—what are you estimating as far as cost of social assistance payments in 1994-95?

**Mr Kaufman:** At this juncture we're not expecting a firm forecast until probably the end of February, but we're looking probably in the \$6.5 billion range. I think that's about right.

**Mrs Caplan:** You're expecting it to be about the same as it is now. You're not expecting any drop?

**Mr Kaufman:** No, that's an increase over this year. I think the number this year is about 6.2, 6.3; so it is an increase. That's why we've indicated that the numbers are up. We don't have a full forecast at this juncture, but our expectations are that social assistance costs will go up next year.

Another major factor playing into it has been the changes in UI. We're getting much more rapid takeup because of the restrictions on unemployment insurance, basically downloading from the federal government to us of increased case load. The indicators are that that's the principal driver right now. If you're looking at three or four factors, that would be a very significant factor in pushing the case loads up at this point. We'll be in a better position at the end of February to give you a firmer idea.

**Mr Carr:** Quite a few reasons: easier ability to get on, allowing 16- and 17-year-olds, eliminating home visits also would be a part of that, just to jump in there.

I have just a couple of quick questions. Elaine did a very good report that we just received this afternoon, outlining what we've heard from various groups on a number of issues.

I take it you've had some discussions with various groups as well. I was wondering if you could just sum up what people are telling you they'd like to see in the next budget. You can talk about whatever, the big one, whether it's taxes or deficits. What're you hearing from the people? What would they like to see?

**Mr Kaufman:** We haven't formally begun the budget consultation process; it begins next week. The first consultation will go on for a month into mid-March, so we actually haven't been meeting with groups to this point. As the Treasurer indicated, there'll be about eight meetings in Toronto and then four regional meetings, so that's going to be our formal consultation with the Treasurer.



**Mr Carr:** So at this point you haven't had any discussions with any groups, even internally.

**Mr Kaufman:** Not the way it characterizes as genuine consultation meetings.

**Mr Carr:** Okay. One thing I would suggest, and I think the Treasurer was very good as that, is keeping the committee informed of what you are hearing. I don't know how that can be done, but I think last year the Treasurer promised and for whatever reasons—not his fault—I think it didn't get done. It may be our fault; we didn't follow up. If there's some way to do that, I think that would be helpful.

**Mr Kaufman:** As you just mentioned, those meetings will be open to the media, at least our provincial consultations, so the information will be more easily accessed that way. We obviously keep some notes of those meetings and we will see if we can follow up and make sure the committee has copies of what has been said.

**Mr Carr:** One of the concerns we heard and one of the things that worried me a little bit was when you talked about the non-tax revenues. We heard from business, whether it's WCB, which I know you don't control, and people are looking at the bottom line.

In the last little while, I want to tell you, I spent, as critic for Economic Development and Trade, a lot of time speaking with business. Probably, and I say this not to be partisan because I don't think you people realized it when you did it, the corporate filing fee—businesses, small ones everywhere from Essex say, even though the money isn't that great, that is the single biggest factor to discouraging them that they've seen over the last little while. They said it isn't the amount; it just showed very clearly, and in that regard it wasn't even the amount coming in; it was a letter that was sent out, which I know was in your ministry.

If I could just caution you, you may talk in terms of non-tax revenue, the people out there are very concerned about that as well because they're looking at the bottom line. I know you can package it up and call it whatever you want and I think in the past it may have worked, but the public has seen through that and they are angry about those increases as well.

We heard from business groups that said that would be great if there was any corresponding decrease in taxes, but I think they know that governments of all political stripes don't do it properly in terms of making—whether it's user fees in one area, there's never been a reduction. So I would encourage you to take a long, hard look at that. I know how you call it but that non-tax revenue will be as disruptive particularly, as all the economists told us, when consumer confidence is very, very fragile.

I think it's starting to look up, a lot of people are, and we cannot afford to have anything that will damage it. I don't want to go back over the past, but the tax increases last year I think did dramatically. That's gone and done, so if I could give a bit of a warning on that, whatever you call it, any increases in any fees will I think be detrimental.

The next question is my last one, and then you can get off to your meetings. I don't know how you can answer

this. The federal transfers are going to be a very interesting question. Are you hearing anything right now? Is it a case of the federal government doesn't know, because I recognize it is just getting in and getting in up to its ears? Of course, they may want to keep some things confidential, but is there anything you can give the committee in terms of what you're hearing in terms of the federal transfers? Where are they at and what are they saying to you privately, if you could share that information with us?

**Mr Kaufman:** Let me tell you what's public and known now, which is that the federal government, on equalization, has increased equalization payments to equalization receiving provinces. The average increases are across the board about 5%. Mr Martin indicated publicly when he did this that it was not a precedent for transfers. I think we would be wildly optimistic if we expected that there would be any increase, from those kinds of signals, to transfers from the federal government.

1710

Clearly we have pushed very hard and will be continuing to push extraordinarily hard on the issue of fair treatment for Ontario. This is something which is I think a concern to all Ontarians, and I can tell you that the Finance minister, at the two federal-provincial finance meetings we've had, has made this a very, very strong point in those meetings and also privately to the federal Finance minister. This is something which needs to be corrected. We're hopeful that they will do something. We'll see what happens.

The single public signal that has been given has been the one by the Prime Minister some time ago, which were ruminations on a freeze of transfers, but beyond that we don't have a firm indication of where the federal government is going to come down. I think Mr Martin has said he is going to have what he would term a balanced approach both with revenue-raising through base-broadening. That is essentially the message he has communicated again publicly, and I think he's generally signalled that to us privately.

That's the basic approach they're looking at, and making some tough expenditure reduction decisions. Now, how federal transfers will play in that, I'm not sure. He has indicated that he expects to make a lot of those reductions in his area of the budget, which I suppose is some reason for a bit of optimism.

That's in summary I think pretty much what we've got from them at this stage. I also don't think they've finalized their transfer decisions, by the way.

**Mr Carr:** I know I speak on behalf of all the members, that all of you will be going into a period where you're going to be working extremely hard, and we do appreciate your taking the time and coming in and sharing it. I know you've got a lot to do but it is very helpful and I know you're going to have your work cut out. I think we all wish you luck. A great deal of the future of this province is in your hands and I know it's in good hands. So we again thank you for taking the time to come here.

**Mr Kaufman:** Thank you very much.

**The Chair:** Just before we conclude, because it was at Mr Phillips's insistence that the committee request that you come back, I wanted to know if there was any burning last thought that you might have, Mr Phillips.

**Mr Phillips:** That's a pretty high standard to set. I'm not sure I have any burning first thought.

I appreciate the work. You've been most helpful. I think the one thing that would be useful for me is just the other revenue numbers, what you had when you had that 1994-95 revenue estimate and what you're currently estimating for other revenue, the tax breakdown just so that the committee can get some sense of where we look like we're heading in 1994-95, but the rest of it is helpful. The rest are detailed questions that I can deal with elsewhere. I appreciate the stuff here.

**Mrs Caplan:** The one point I would like to make before we leave it, on the non-tax revenue, and I've heard this from a number of small business people particularly in my riding, is that as you move to more of a user-pay for services that you're providing, there is a lot of frustration when they don't feel they are getting any service but that in fact you're adding to the hassle of yet another form to fill out, and on the \$50 filing fee the concern was they weren't getting any additional service.

They could understand the one-time annual fee and fill out the one form to update the records. In fact, what I heard from small business in my riding was that they were prepared to accept that on a one-time basis, but to do it annually when there was no change, to be required to pay \$50 to fill out a form when everything was exactly the same made them crazy. If this was a hidden tax, it was adding insult to injury when you made them fill out a form that wasn't needed and send in \$50 for an unnecessary form. They said as bad as the \$50 was, the unnecessary form made them nuts.

I don't know whether you have any response to that or whether you are considering looking at your non-tax revenue and at least being able to say, "Look, we need the revenue, we're looking at user-pay," but you're not adding an unnecessary form to justify the non-tax revenue that you want to collect. I'm sure you've heard that from others.

**Mr Kaufman:** Yes. Just on that point, Elinor, when we looked at this move, one of the key things that factored into the decision was making sure we had a permanent, continuously up-to-date system. The reason for that is that the actual information base itself has real value as long as it's up to date. I don't know where we're at in this but we certainly were looking at ways of building off that database other products which would have some commercial use in the marketplace where we could actually get some revenues. The minute the integrity of the database starts to decline, then that commercial value evaporates.

The question of whether there's a better way of

actually maintaining that is something we certainly can take back to CCR and look at.

Just the one other point I'd make, in terms of our approach to non-tax revenue we have instituted a model which is very much geared towards customer service. Ministries are able to retain about 30% of their non-tax revenues to reinvest into customer service improvements or into the development of new products.

I think it's a point well taken that people do want to see value for their tax dollar and that's been part of the method that we felt was necessary to get the non-tax-revenue, user-pay concept more accepted. I think there have been some improvements in some areas and obviously in others we've got a long way to go.

**Ms Haeck:** Just as a point of information, since it has been raised at least twice, I have the dubious honour to be the Chair of the standing committee on regulations and private bills. A substantial amount of the business that we conclude relates to the resuscitation of corporations that have allowed their incorporation to lapse. The process that they have to go through to basically regenerate themselves costs them somewhere in the neighbourhood of \$2,000, not \$50, and their range of tax benefits as well as liabilities that exist around the incorporation.

When a corporation allows the whole process to lapse and one of them is that MCCR sends out forms to them, not just around this filling in, trying to chase them down, but other things once they no longer exist, the owners basically, there's a range of tax obligations and other concerns which obviously MCCR can do a whole lot better job of explaining. But I think for the most part some small business people have not understood that there is a range of other problems that they face by not paying the \$50 and being easily found uncontactable.

Because they weren't regularly sending in their forms, lots of times those records were totally inaccurate and the shareholders or whoever were totally unfindable and 10 years down the road somebody all of a sudden finds out when they contact some former bookkeeper, "Oh, guess what. I have this letter for you." Thankfully nobody has raised a serious problem and decided to sue them or some other good thing because they haven't submitted their name in the proper forms. I think that while the point is well raised, and that is a concern out there, there are also some other major liabilities that small business people should know they make themselves liable to.

**The Chair:** On that note I think we could conclude. I want to thank the representatives here today from the Ministry of Finance for spending this additional time with the committee. It's very much appreciated. Thank you very much.

**Mr Kaufman:** Thank you. Good luck in your deliberations.

The committee adjourned at 1719.



## STANDING COMMITTEE ON FINANCE AND ECONOMIC AFFAIRS

**\*Chair / Président:** Johnson, Paul R. (Prince Edward-Lennox-South Hastings/  
Prince Edward-Lennox-Hastings-Sud ND)

**\*Vice-Chair / Vice-Président:** Wiseman, Jim (Durham West/-Ouest ND)

\*Caplan, Elinor (Oriole L)

\*Carr, Gary (Oakville South/-Sud PC)

Cousens, W. Donald (Markham PC)

Haslam, Karen (Perth ND)

\*Jamison, Norm (Norfolk ND)

Kwinter, Monte (Wilson Heights L)

\*Lessard, Wayne (Windsor-Walkerville ND)

\*Mathysen, Irene (Middlesex ND)

\*Phillips, Gerry (Scarborough-Agincourt L)

\*Sutherland, Kimble (Oxford ND)

*\*In attendance / présents*

### **Substitutions present/ Membres remplaçants présents:**

Crozier, Bruce (Essex South/-Sud L) for Mr Kwinter

Haeck, Christel (St Catharines-Brock ND) for Mrs Haslam

McLean, Allan K. (Simcoe East/-Est PC) for Mr Cousens

Sterling, Norman W. (Carleton PC) for Mr Cousens

### **Also taking part / Autres participants et participantes:**

Stockwell, Chris (Etobicoke West/-Ouest PC)

**Clerk pro tem / Greffière par intérim:** Bryce, Donna

**Staff / Personnel:** Campbell, Elaine, research officer, Legislative Research Service

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# Official Report of Debates (Hansard)

Wednesday 2 February 1994

# Journal des débats (Hansard)

Mercredi 2 février 1994

**Standing committee on  
finance and economic affairs**

**Comité permanent des finances  
et des affaires économiques**

Draft reports

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## STANDING COMMITTEE ON FINANCE AND ECONOMIC AFFAIRS

Wednesday 2 February 1994

The committee met at 1012 in the St Clair/Thames/Erie Rooms, Macdonald Block, Toronto.

## DRAFT REPORT

## UNDERGROUND ECONOMY

**The Chair (Mr Paul R. Johnson):** The standing committee on finance and economic affairs will come to order. Our first order of business this morning is to finalize the draft report on the underground economy. I believe all the members have had an opportunity at this time to peruse the draft report as it was written by our research officer, Elaine Campbell.

At this point in time, the Chair is soliciting responses or direction.

**Mr Gerry Phillips (Scarborough-Agincourt):** I guess we'll just go around the table. I think it's a good piece of work. I assume this is all public meetings and this is all in public.

**The Chair:** Unless you choose it not to be.

**Mr Phillips:** No, I think there's virtually no occasion when I want to be in private.

*Interjections.*

**Mr Phillips:** I shouldn't say there's no—

*Laughter.*

**Mr Phillips:** When I'm doing the public's business.

**The Chair:** Does Hansard show laughter or loud laughter?

*Interjection.*

**Mr Phillips:** Yes, "We'll make that decision," they said.

As I say, I think it's good and I think where we have to focus our attention is on the recommendations side, which is clearly the toughest for the staff to do.

Before we get to that, the one thing I think might be useful is for me—I'm not sure it comes through as clearly as I think it might, about the size of the problem. I don't know whether other members share my view, but I think without much doubt we're looking at it being 7% to 10% of the economy and I think we're looking at \$3 billion to \$4 billion of lost revenue. I base that on, firstly, 7% to 10% of the economy would represent that sort of lost revenue for the province. Then, if you just look at the government's estimates on lost tax revenue, liquor revenue, retail sales tax revenue in the last few years, plus I think the Ministry of Finance said the biggest loss is actually in the area of income tax, so that we don't have any income tax estimates on lost revenue.

So my thought would be on page 3, on the size of the underground economy, at the bottom there, or at least somewhere in this section, to try and highlight that it is very large. I think we heard it is growing quite quickly right now. Maybe I can just go through them.

**The Chair:** Sure, that would be a good start.

**Mr Phillips:** Tobacco has tended to become almost

what I call the metaphor for the underground economy. I think that one's quite serious. I might highlight it a little more on page 10. Then, on page 14, I think the public safety is maybe highlighted enough here, but over the life of this committee that one became almost even more significant in my own mind.

Then we get to recommendations. I would once again on recommendations restate that this is a major problem for the province of Ontario. The solution is going to be a multifaceted solution. Again, I say I think we have to be realistic with ourselves. This committee, with the limited time we put into it, isn't going to find all the solutions. So I'm not embarrassed to say we've taken it this far, but now it needs more effort by the government.

Then I would personally orient the recommendations, if we can find a way, under sort of broad headings. I think they're not bad here now, but to me the broad headings are compliance, public education, tax levels—did I say enforcement?—enforcement and government accountability. But I don't feel strongly about those headings, and if the rest of the group doesn't feel strongly, I don't mind staying with the current ones.

Candidly, on the one of lowering tobacco taxes, my own instincts are to be with the Minister of Finance on that and saying that kind of is the last resort. I'm not sure we've done enough on all the other things before we look at every reduction of the taxes on tobacco.

So I would tend to acknowledge this is a major problem and growing. I think what's happening in Quebec is extremely serious and could begin to move itself here. But I would be more inclined to say that the committee is not convinced that we've done everything we can in the areas other than reducing taxes, before we reduce taxes. So, as I say, I think this is a good piece of work by the research staff and in the end will be a good piece of work by our committee.

**The Chair:** Further indications?

**Mr Bruce Crozier (Essex South):** Notwithstanding the fact that I wasn't here for most of these, it doesn't prevent me from saying something on them. But these are rather minor—

**Mr Kimble Sutherland (Oxford):** He learns quickly.

**Mr Crozier:** I found that the rest are that way, so why shouldn't I?

Page 3, the first paragraph, where, although it's not an exhaustive list, we say, "Services such as car repairs," it seemed to me the discussion included general construction or home renovation as being major. So I thought if we were going to point out anywhere where it was a problem at all, that should be included.

On page 15, if I can get to that, I just wondered about maybe some others' comments, because I hadn't heard them. But where we say, "'Sin' taxes were seen by many...as a health as opposed to a revenue measure," is that correct? Is that really why those taxes were put on so

many years ago and increased so many times, because of the health aspect?

1020

**The Chair:** Deterrents, yes.

**Mr Crozier:** Is that right?

**Mr Norm Jamison (Norfolk):** That's what they said.

**Mr Crozier:** Gee, I hate to be sceptical, but okay.

**Mr Sutherland:** Maybe you should call Bob Nixon and find out.

**Mr Crozier:** Yes. Well, whoever. Page 17, under "Unemployment," here again it may be something that would be seen in the editing, but where it's in italics, "Every time a plant lays off 1,000 workers, there are 1,000 new home renovators and home builders." What? Laid off? I don't think that sentence, that thought, is quite complete. It leaves me in the middle of nowhere if it just says that.

**The Chair:** No, that's a statement. It says, "Every time a plant lays off 1,000 workers, there are 1,000 new home renovators and home builders." It creates; maybe "creates" should be there, but that's a quote.

**Mr Crozier:** Oh, okay. So it's the opposite to what I was thinking. All right.

**Mr Sutherland:** It's a direct quote.

**Mr Crozier:** It's a direct quote. So we can't change a direct quote.

**The Chair:** Those people that get laid off go into business.

**Mr Crozier:** I see. It's left for me to interpret whether it's 1,000 fewer or 1,000 more, eh? Okay, I'm just about finished.

Page 23, the paragraph that begins "Doob and Brooks," we go on to say in about the fourth line, "These included whether respondents felt they paid too much tax, whether the system of deductions was seen as fair," and then we go on to give an example about the respondents. I just wondered what the percentage was of respondents who gave a comment as to whether the system of deductions was seen as fair. Oh, excuse me, they said it was unfair. Thank you. I answered my own question.

**Mr Gary Carr (Oakville South):** I'm not going to spend a lot of time on this report, because we will be submitting a minority report, and I'll tell you why. Right off the bat, what we've called for, same as last time, is that there should be a freeze to deal with the whole problem. The problem we have with the underground economy is not one of enforcement; it's the fact that taxes are too high.

We heard yesterday from the Ministry of Finance people that they are looking at non-tax revenue, as they call it, so I don't suspect the NDP is going to support a call for a freeze of taxes and fees, because in fact we heard very clearly from the deputy minister that they are looking at it and you'll probably see it. So I don't expect us to get consensus, because I don't expect you to agree to something and then have the budget come out and have the opposite.

We're going to put a clear statement in there where again we disagree with the government, not necessarily

with the members sitting here but certainly with the Minister of Finance. The problem we are facing is not a revenue problem; it is a spending problem. I don't think you can deal with one without the other. So we'll be calling for some comprehensive plans to deal with spending, which I don't think you will be able to agree with.

So quite frankly, in terms of writing it, as happens with all these reports, I'm not going to get into too much detail, because I think there are fundamental differences certainly between us and the government, maybe not so much, surprisingly enough, between us and the Liberals. I don't know. But I don't think there's going to be consensus on it, so I don't want to spend a whole lot of time going through this, because we will be submitting a minority report on what we think needs to be done to deal with it, unless of course the members agree with a couple of things I've said and are willing to support it in a broad sense. Then I'm prepared to work and go through the detail to get a consensus. Forgive me for being so cynical now, but I just don't see it happening.

**Mr Sutherland:** Let me say that I think the additional information that's been provided by the researcher is very good and completes the report. I don't really have any concerns or comments regarding that. I don't have a great deal of problems with the comments that have been made by Mr Phillips, including how to categorize the recommendations. I think generally that's fine.

I guess the one point that I would like to make is, and I don't know how we normally do this with reports, but I think there is one new development that you should be made aware of regarding the tobacco issue, and that is the fact that we now have a manufacturing facility on a native reserve. I think we all need to be aware—not to say that it definitely will—the potential implications of one manufacturing facility on a native reserve are not significant, but the fact that one is there means that there could be others. The potential impact from that is significant to the whole issue of tobacco policy, taxation, taxation policy.

If no one has any objections, I think that would be important to put into the report under the comments regarding tobacco just to make aware—maybe it can go after the copycat section or just under the general comments. That has implications for the underground economy, particularly regarding tobacco.

There's a lot there. I'm not sure if that's clear enough to allow, but hopefully—

**The Chair:** Ms Campbell will have enough time to write that down?

**Mr Sutherland:** I'm sure she'll make it more concise than I've presented it.

**The Chair:** Do you want to ask further questions or clarification with regard to that, or anything that we've said so far?

**Ms Elaine Campbell:** Well—are there further comments?

**The Chair:** Mr Phillips, did you have further comments to make?

**Mr Phillips:** I'm interested in Mr Carr's comments.



I think one of the messages in the report is that people are concerned about taxes. I think we should be making a comment on holding the taxes and reducing them long term. I wouldn't mind a debate around the language that they would like to see in there because, as I mentioned, I have some comments on taxes and compliance and enforcement that I'd like to get into. Maybe we can find a way that at least we understand the language you'd like in there. I'd like to make sure we give the government an opportunity to say, "Listen, we can agree to that language" or "We can't agree to it." It would be useful to see that.

**The Chair:** Whatever we might direct the government to do is another thing, but I think there's a real consensus among people and politicians that taxes have reached the limit. I don't think that's a question. It's maybe the advice we want to send to the provincial government with regard to that.

**Mr Carr:** My problem comes out of yesterday. I think everybody agrees about the taxes but, as you know, what we heard yesterday is we're talking about—and the terms mean the same—non-revenue sources. To me, we need a clear statement that there should be no increase in taxes, fees, non-revenue, bottom line, whatever you want to say. I think that's where we're going to run into the problem.

The other members can say no increase in taxes. The Minister of Finance has already said no net increase in taxes, so I think they can buy into that. What I'm saying is that it would include every fee and no new non-revenue tax generation, whatever that is. That's where I don't see the government agreeing, because you already heard the deputy minister saying: "We're looking at it. We're telling ministries, 'You can keep 30% of it and you're going to see it in the next budget.'"

Forgive me; if this committee wants to put that report together in strong language, I think it would be terrific. Being through this, I don't think we're going to see the standing committee do something it knows the government won't do in the budget. I think—and I may be wrong—I heard very clearly the deputy saying that we are looking at all non-tax revenue. They may decide three weeks from now they won't do that. This report needs to be done and if we can have clear language—but I don't want to just focus on taxes; it has to be fees and no increase in whatever we call that non-tax revenue. How we word it, I don't know. If we can get a clear statement then maybe we can get a consensus, but I don't think government members will agree to that.

**Mr Sutherland:** It seems like members of the committee want to have a discussion on that. There are still a few questions that I believe the researcher has left in the hands of the committee. Maybe we should go through those issues first and then if we want to come back to this discussion, do that—

**Mr Carr:** That's a good idea.

**Mr Sutherland:** —but to get the other issues out of the way first.

**The Chair:** That sounds like good advice. However, a couple of additional members of the committee would

like to make some comments.

**Mr Norman W. Sterling (Carleton):** Because I wasn't involved with the hearings, please just shut me off if I'm—one of the problems I think we face in the language of tax evasion and tax avoidance is another popular term which particularly was used, I must say, by the governing party when they were in opposition, and continued to be used in Ottawa and in the press, and that is the whole concept of what a tax loophole is.

**1030**

I think the public have it in their minds that tax relief is a tax loophole. Many of these so-called loopholes were created intentionally by governments in order to drive a certain kind of philosophy or economic program that they might have wanted; for instance, capital depreciation. I remember a few years ago on films, I think you were allowed to write down the cost of a film over a two-year period, and that was done intentionally by our governments to encourage the film industry in Canada.

I wonder whether or not the committee might want to put in the whole concept of the loophole and this misconception, in my view, that is out there in the public that these things were created unintentionally by government.

Some tax relief has been created unintentionally by government, but if you read any people who deal with taxation, there is no logic or reason behind a lot of the rulings that occur with taxation on the basis of intent. In other words, someone rules in the taxation area on a particular thing, it's just on the wording. In a lot of cases people are taxed with no fairness and in a lot of cases people are let off tax without fairness. So these loopholes, so-called—I don't know, I just think you might want to put something in there.

Can I say another thing in terms of this, having only briefly looked through the report? I see where you have provided some comparative information on tobacco and beverage alcohol taxes on page 19. What does the dark lining mean? Does that mean added or out?

**Ms Campbell:** Those were additions to the previous edition of the report. It's new information.

**Mr Sterling:** We have comparative tax rates in the United States on both alcohol and tobacco, do we?

**Ms Campbell:** There's nothing in there in any great detail.

**Mr Sterling:** I really think that would be helpful, for me anyway, in terms of pointing out the difference perhaps in tax per carton of cigarettes, or the difference in cost of some quantity, a litre or a bottle of alcohol or a case of beer, and maybe even a gallon of gasoline or a litre of gasoline. With those kinds of comparisons, people start to understand the attractiveness of the smuggling.

The other part that I would like to see written somewhere is that a lot of the smuggling, particularly in eastern Ontario, is related to the Akwesasne group in Cornwall. I think it would be very informative for us to know exactly what tax laws and limitations are placed on Indians in Ontario. In other words, what are they allowed to do? Are they allowed to buy cigarettes without tax for their own consumption? Are there limitations on this? That kind of thing. Is that included in your report?

**Ms Campbell:** Excuse me, I'm trying to find it here. I'm having difficulty finding that.

**The Chair:** While you're looking, I would just like to speak to the point you brought up about loopholes. We did have quite extensive conversations about evasion and avoidance. In fact, Mr Kwinter was the one who initiated that debate, I think, and he quite aptly explained the difference between and the two.

I think we all agreed that avoidance was taking advantage of what you have indicated would be loopholes and evasion is something that you would do that would be totally illegal. I think we agreed that was a pretty basic but good definition of the difference between the two. We didn't actually use the term "loopholes." I know people still use that term, but you're right, we haven't used it in our report.

**Ms Campbell:** Getting back to Mr Sterling's point, if you look at the bottom of page 11, the final paragraph, it makes reference to the presentations from the Ontario Provincial Police and the Ontario Flue-Cured Tobacco Growers' Marketing Board. The OPP did discuss the issue of first nations people and tax-free status. The third line says: "First nations people are allowed to purchase unlimited quantities of tax-free tobacco products in the United States. According to the OPP, these purchases are to remain on reserves and are for personal use only."

**Mr Sterling:** Can they not buy them for their own personal use from Canada as well?

**Ms Campbell:** You were thinking in the Canadian context, what the status here in Canada is.

**Mr Sterling:** Yes, as well.

**Mr Jamison:** There's a quota system on tobacco.

**Mr Sterling:** But I think the ministry of revenue also has some pretty accurate figures here on how much is in fact being purchased on these reserves. Would it not be prudent for us to ask for that?

**The Chair:** In legal channels they do, but when you go outside the legal parameters of legal channels—

**Mr Sterling:** But even legal channels, as I understand it, it breaks down to every person on the reserves smoking something like two or three cartons a day.

**The Chair:** That's right, it does. However, once you go beyond the legal aspect and the documentation that would be made by the Ministry of Finance with regard to how much tobacco is being used by the native community, then there's the other side of that, the underground economy aspect of it, and they can use all they want, according to what we heard.

**Mr Sterling:** We're really faced with a problem here in terms of enforcing the law on the reserve. Should we not really face that? Should we not really get to the bottom of this problem? If that is a problem, then let's—

**The Chair:** I guess it depends on how extensively we want to report on different aspects of the underground economy. We're trying to get a report together here that's basically informative yet concise and we've been through much of what you're raising again.

However, I do have quite an extensive list here. I want to go to Mr Lessard next.

**Mr Wayne Lessard (Windsor-Walkerville):** I think we're talking about finalizing a report that Mr Carr has indicated the Tories aren't going to be signing at this point.

**Mr Carr:** If you agree with what I want, you can have it. Tell me if you agree, yes or no.

**Mr Lessard:** There are some parts of the things that you said that I agree with—

**Mr Carr:** Yes or no?

**Mr Lessard:** —and I'll indicate to them that I don't think that you'll find much disagreement to recommend to the Treasurer that there will be no net increase in taxation. But we spent millions of dollars on a Fair Tax Commission to investigate ways to make the system more fair, and to make a recommendation to the Treasurer that would make it difficult for him to make adjustments to the tax system would really seem incongruous.

Now as far as government fees and licences and registrations and payments for services rendered by the government are concerned, I wasn't here for all of the hearings, but I don't know if anybody came and said these sorts of fees are directly encouraging people to become involved in the underground economy and if you freeze those or reduce them or eliminate them, it would cause people to operate above ground instead of underground.

The Tories, if anybody, I would think would be indicating that fees for government services or for licences and registrations should really reflect the cost of providing that service. If we are going to review those types of services provided by government and find that the costs that we're charging don't cover the services we're providing, I think Mr Carr would be asking us to adjust those fees upward to cover those services. To make a recommendation that we shouldn't have any adjustments in those types of fees just wouldn't make any sense.

1040

**Mr Carr:** There's no sense arguing this. Obviously, we disagree on that. You heard the presentation saying even if it's WCB, people realize it's the bottom line of what they're paying. I know the line, the way it's being sold by the bureaucrats and everybody else, is that user fees pay. Nothing else gets reduced. You know we're not going to agree to that. You know you can't agree to that. Let's save the debate for the Legislature.

The other point I want to make and the thing that we want to put very clearly in there somewhere, which I don't think you'll agree on—I don't know if Elaine would tell us whether it would be in the definitions or whatever—is that I would like a very clear statement that the underground economy is nothing but a tax revolt, so that people know very clearly what it is. I don't want to get into the debate that was on yesterday with Mr Manning, whether we're encouraging one or not. The fact of the matter is that on the underground economy I think we need to have a very clear statement in there, under "Definitions" or whatever, that the reason for the underground economy is people are revolting because of the high levels of taxation.



I would even go so far as to say—not to be political with it; we can accuse governments at all levels and all political stripes of doing it, because that is the reality—the fact of the matter is there needs to be a clear statement, if the report is going to mean anything to the average public out there, that the reason for the underground economy is it is a tax revolt and people are fed up and they'll do anything to avoid paying taxes, whether it's smuggling cigarettes—out in the open last night you could see people flaunting it, walking down the streets waving them in the air in front of the cameras. We have a tax revolt because of the high taxes in this province and there needs to be a clear statement.

If you want to put that in there, terrific, but—I've been through these committees before—let's save the debate for the Legislature. If you can agree on this stuff, if you know a couple of ideas, great. I'm not going to convince you; you're not going to convince me. Let's just get on with it and we'll do our minority report, which ironically probably nobody will listen to anyway because they didn't in our last one in the pre-budget last year, so I'm under no illusions that we're going to change you. We just want to be very clear on where we stand. If we can get an agreement on those issues as I outlined them, terrific; if not, let's move on and we'll go through the report and try to get the part that we can agree on to be fairly general. I just want you to know where we're coming from, the areas of concern, and I don't see you changing.

**The Chair:** The underground economy, of course, is not a new phenomenon. I think that was one thing that we certainly were made aware of.

**Mr Sutherland:** I just wanted to pick up in terms of Mr Sterling's comments, and you mentioned about how we had defined it. We may want to put in the comment about fair taxation—I think the debate about loopholes is, do those tax relief measures still serve the purpose they were intended to? Maybe some reference to a debate about that in terms of people understanding the tax system and what is a fair tax system may be relevant. He's quite right that some of them are for economic programs, some of them were to create jobs. I'm not sure the evaluation of all those so-called tax relief measures or loopholes has been done to justify which ones need to be there and which ones don't.

Just regarding the native issue too, there is one recommendation in the list of recommendations encouraging the government to negotiate with first nation reserves on the question of compliance, enforcement and—I'm not sure if we used the word—collection, but on those issues. So we have made some reference that this issue needs to be put forward, but I think your point about what the situation here is in Ontario and Canada regarding natives and their tax responsibilities or tax exemptions is probably good information to have in the report for people to understand.

**Mr Phillips:** I think we should try to put something in on the tax area. I'd like to try something on the group to see if we can get a consensus on it. I would have it, in the recommendations, called "tax level" as opposed to "fair taxation," and I would say: "It is clear that a major

part of the problem is the reaction to taxes. One of the solutions will be to assure the public that the direct and indirect taxes will in the short term be at least not increased and over the long term that the tax and near-tax burden will be reduced."

**Mr Sutherland:** What do you mean by "indirect taxes"?

**Mr Carr:** Non-tax revenue—fees, licences.

**Mr Phillips:** You see, if by fees what you mean is another way of taxing, then I think we do have a problem. If by fees you're saying, "Listen, this is another way of taxing and so we're going to charge people directly for things they used to get paid for elsewhere," then we are increasing the tax or near-tax burden on people. If they used to get something free and now they pay for it, and they have to have it, that's not a fee; that's a tax.

**Mr Sutherland:** Okay. But the question on some of those things is whether they have to have it. I understand the comment that was made about some of the fees on licences. They hadn't gone up in 20 years in some cases, and in other cases they were extremely low. So they go from \$10 to \$15 and the sense is, yes, it does generate more revenue for the government. But I'm not quite convinced that type of increase is leading to the underground economy. I would suggest that certainly the discussion around taxation in general is an issue, but I'm not convinced that non-tax revenue that's increasing for some of the registrations, licences, are the reasons people are going into the underground economy.

**Mr Phillips:** I think we just have a fundamental difference of opinion. I think governments now think they can pull the wool over the public's eyes by saying, "We're not increasing taxes; we're increasing fees." I think toll roads are a tax. They're a neat tax, but they're a tax.

**Mr Sutherland:** I would disagree with you about pulling the wool over the eyes. When people have got to pay it, they understand that they're paying it, so I don't see how you're pulling the wool over the eyes. In many cases, those fees and licences are optional things. There are a few that are mandatory, I will acknowledge that, but I would say a lot more of them are optional types of things and people may make the decision as to whether, if they're upset about the cost, they can engage in a different type of activity.

**Mr Phillips:** I move that, by the way, those words, just so we're debating something.

**The Chair:** Could you just repeat that again for the committee members?

**Mr Phillips:** "Tax levels: It is clear that a major part of the problem is the reaction to taxes. One of the solutions will be to assure the public that the direct and indirect taxes will, in the short-term be at least not increased and over the long term, the tax and near-tax burden will be reduced."

**The Chair:** Isn't one of the concerns that people have as well the value they're getting for the tax money they're paying? Isn't that part of the problem?

**Mr Phillips:** Sure, but isn't that government accountability? Don't we have recommendations in other

areas on that?

**Mr Sutherland:** But I think the question that's being raised is, can you look at them totally separately or is there some linkage? I would say there is some linkage. I mean, you've been here as long as I have; you know the different groups come in and say the public would support more increased taxes if they were going to pay more for *x*, whether that be health care or education types of things. The groups come in with the surveys. I think the sense, the reflection of those surveys, depending on what the methodology is, is that people, if they get a sense that they're going to get more service or there's going to be more accessibility to that service, are willing to pay more taxes. So then the question is, how much can you separate the taxation from what they feel they're getting in the value for these public services?

**Mr Phillips:** If you want my reaction—I mean, maybe it's easier in opposition to make these motions than it is in the government, and I accept that—I actually think that we're at the end of the road when people believe us when we say we're going to do something with increased taxes. I think virtually every single individual or business has been living with very little increase in revenue, if any, and that we get our revenue from taxes and fees. Business gets its revenue from selling goods, and they've gone through several years where they couldn't take their price up and so they've had to find a way to kind of cut their cloth. As I say, if we don't understand the mood, what I heard on the underground economy was indeed a tax revolt—not by everybody but by a significant number and a growing number.

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I think they have difficulty in believing governments are going to, in the short term, reduce taxes. But they want a statement that governments understand we're at the wall and that in the short term we're going to cut our cloth to handle it with no increase in the tax. I know we can say here that fees aren't a tax, but if you're running a business and you previously weren't paying whatever it is and now you're paying it, that's a tax on you.

It's like yesterday we heard that the clean water organization's going to spend a bundle of money. No taxes are involved but people's water rates are going to go up three times. They're going to go from \$250 a house to \$700 a house. If we don't think people will interpret that as a tax and they'll see it as a fee, if we think they'll think it's a nice fee to pay for services, we're kidding ourselves. Logically, you can say: Listen, pay for water. That all makes sense in an environmental sense. But if you're a home owner and you have lived in a community that has funded its sewer and water in a way and it's suddenly changed, you'll say, "That's a \$500 tax increase on my property tax."

**Mr Lessard:** You can't buy water in the underground economy.

**The Chair:** I'd just like to pose this question, if I may. Isn't one of the problems the fact that people have been receiving services at a rate that is less than probably what they should have paid in the past? Isn't there some merit—

**Mr Phillips:** But this is not the underground economy. I think what people are responding to and what I heard from a lot of them was: "I am so sick of taxes. I will do whatever I can to avoid them/evade them." Not everybody, but a significant number.

**The Chair:** I'd just like to pose this too. Isn't it human nature to purchase your commodities at the lowest possible price? Irrespective of taxes or anything else, you just want—

**Mr Sterling:** That's the first NDP guy I've ever heard say that.

**Mr Carr:** He's cheap.

**Mr Sterling:** I'm amazed. You must come from eastern Ontario.

**The Chair:** I must, Norm. I must.

**Mr Jamison:** A simplistic point of view is one that's been put forward by the third party. It doesn't take into account some of the—it is very simplistic.

If I might reference to questions, the numbers of questions that evolve around government spending in the House, it seems that every second question is, "Why are you cutting back here and why are you cutting back there?" Let's not play this for what it's worth.

**Mr Carr:** Not from us.

**Mr Sterling:** Not from us.

**Mr Jamison:** Pardon me, Mr Carr? It's what? What did you say it was?

Anyway, that seems to be rather the case. Rather than look at the simplistic point of view, it also deals with the recessionary period that we've gone through and the anxiety of people going through a lengthy recession, one that has been called the worst in 50 years. People's mindset during a period of time like that changes somewhat. We've heard and read very clearly about the lack of security that people feel within their employment. That in itself adds to that.

When you take a simplistic point of view, you certainly don't add in the human mix and the human factors that really contribute to the human mindset that given all of that uncertainty, as an average person, I'm going to find the ways and the means to spend less. That has a direct effect, therefore, on the underground economy and the size of the underground economy.

I simply don't buy into the simplistic point of view that it's taxes. Taxes are very important. The message, and I think there's a consensus, is that, again in people's minds, whether taxes have hit the wall or not, that is the perception. Taxes are at a level where people are saying "major problem."

But to simply say, as the third party would here, that that is the end-all and be-all to the problem, I believe there are other factors that weigh into that. I just thought I should put that clearly out there to the committee, that that very simplistic point of view is not one that's well rounded whatsoever.

**Mr Sutherland:** If we want to make some reference to the fact that there's concern about taxation levels and that governments need to keep that in mind in terms of how they establish tax rates and tax policies, as a general



comment I think most of us would agree with that. My sense is, and I would concur with Mr Jamison, that we can make that as a statement, but in terms of looking at what the background is, I would agree with Mr Jamison. I wouldn't accept the analysis put forward by the third party that if you simply reduce taxes, automatically this whole problem's going to be solved. We know, as other members have stated, the underground economy has been around for a long, long time. If we want to make a statement to that effect, I don't think many of us would have a problem.

**Mr Sterling:** I think that's not true. When you compare the level of the underground economy now with what it was even five years ago, to say it's been around a long time is misleading, actually. I think there has been an underground economy, but it might have been—I'm just using figures out of the air—2% before and now I suspect it's 25%. To say it's been around for a long time—I think it's a recent phenomenon.

**Mr Sutherland:** The committee has heard it has certainly increased, and we've all accepted that. That's certainly noted in the report, that the growth is there. But it has clearly been there.

**The Chair:** Before we go to Ms Campbell to review what we've said so far, I just want to remind everybody that should we complete this report today, and it would appear that we may not, any dissenting opinions should be delivered to the clerk tomorrow.

**Mr Sterling:** No way.

**The Chair:** If this report cannot be finalized, then we will deal with it in subcommittee on February 17, and dissenting reports should be in before that time.

**Mr Carr:** I thought there was a little bit more time. When we had discussions, I thought it was by the subcommittee meeting we had the minority reports ready, didn't we? Because I think we talked and I think it was Gerry who said we need a little bit more time.

**The Chair:** Yes. That's if we don't finish it today.

**Mr Sutherland:** Sorry. I thought that was for the pre-budget report, that in terms of what we had—

**The Chair:** Yes, we're dealing with two reports here so it does get a little confusing. The underground economy is what we're dealing with right now.

**Mr Carr:** But we would need a little more time than by tomorrow for a minority report.

**The Chair:** On the underground economy.

**Mr Carr:** Yes.

**Mr Sterling:** We didn't know whether we were going to agree with it today or not. I thought Kimble was going to agree.

*Interjections.*

**Mr Sutherland:** Would by Monday be acceptable?

**Mr Carr:** You know our points. It's easy enough to do. If you want to agree, we could—

**Ms Campbell:** That's fine.

**The Chair:** Okay. Monday would be acceptable.

**Mr Sutherland:** So by Monday morning.

**The Chair:** Sure.

**Mr Carr:** The other one just like it, Chair: The pre-budget was the meeting on February 17 or whatever?

**The Chair:** Yes. By subcommittee on February 17.

**Mr Carr:** Okay.

**The Chair:** We should probably review what we've done or what we've recommended so far to the research officer. Ms Campbell, if you would just take us through what we've suggested to you.

**Ms Campbell:** I've attempted to place the members' comments in some sort of order as it relates to the order found in the paper.

There were some comments made about inserting statements related to the public mood with regard to taxation levels. I was wondering if the committee would be agreeable to inserting a sentence in the second paragraph of the first page under "Introduction," something along the lines of, "As one of the background reasons for entering into the study of the underground economy, the committee had a sense that there was a growing public perception that tax burdens were growing" or "tax levels were growing and increasingly seen as a burden."

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**The Chair:** There seems to be no opposition to that.

**Mr Sutherland:** Can I just get the wording? Are you saying, "perception"? Are you going to use the term "perception"? Okay.

**Ms Campbell:** On page 3, the first paragraph, Mr Crozier asked that the committee perhaps insert a reference to home renovations among the self-performed services that are referred to in the second sentence.

**The Chair:** It would appear that there's no opposition to that.

**Ms Campbell:** Thirdly, Mr Phillips was interested in more information on the size of the underground economy in terms of lost revenue. There are some references on page 13, I think it is. There's a paragraph at the bottom of that page, "Since its appearance before the committee in October 1993, the Ministry"—of Finance—"has been able to calculate specific revenue impacts." Would the committee be interested in moving that paragraph perhaps to the beginning of the section on the size of the underground economy, taking it out of "Reasons for Concern"?

**Mr Sutherland:** I would suggest leaving it there, only because obviously we know some of it's attributed to the underground economy and some of it is to the shifting pattern. Since we don't have a way of breaking it down to both I would suggest leaving it where it is.

**Mr Phillips:** To me, if we're agreed that the underground economy is 7% to 10% of the economy, that we'll never, even under perfect conditions, eliminate the underground economy, but if there were no underground economy the revenues of the province would be \$3 billion to \$4 billion higher than they are. I think that puts an order of magnitude on it, so at least we know how much energy one should be expending in trying to deal with it.

I would prefer to have a paragraph in there that says that in the end it looks like, taking into account all of the

witnesses, that the underground economy is at least in the 7% to 10% range. If that is the case, the revenue loss to the province is in the \$3-billion to \$4-billion range, and while we understand that the underground economy can never be completely eliminated, this is the order of magnitude of revenue that the province doesn't get as a result of the underground economy.

**Mr Sutherland:** I'm just looking at page 6 where Professor Vaillancourt puts it "at the lower end, 7.5%, which represented \$50 billion to \$55 billion in 1992" towards the economy. If we added in a sentence there, what the potential tax impact would be, would that be fine?

**Mr Phillips:** I suppose it's second best.

**Ms Campbell:** I think it's important to make clear to the members that the numbers and percentages cited in this section are national GDP as opposed to provincial.

**Mr Sutherland:** Okay.

**Mr Jim Wiseman (Durham West):** So you have to take about 45% of your number to really calculate what the impact is on Ontario.

**Mr Phillips:** No, no. Provincial revenues are running around \$40 billion; 7% of \$40 billion, to me, is \$2.8 billion.

**Mr Wiseman:** You can't do it that way. That math doesn't add up.

**Mr Phillips:** Why?

**Mr Wiseman:** Because if you take GDP then you have to take how much is going to be missing and then you have to take what percentage of that would be paid in taxes, so you can't just take it right off the top of our revenues.

**Mr Phillips:** You give me a better way of doing it.

**Mr Wiseman:** Do it the way I just said. It works out to be about \$1.4 billion.

**Mr Phillips:** The government says it's gone up that much just in three taxes in the last few years. It doesn't make sense to me.

**Mr Sutherland:** What you're asking for, though, is under the discussion on the size of the underground economy, you want some reference made to the impact it has on government revenue. Yes?

**Mr Phillips:** The government itself says that's the problem.

**Mr Sutherland:** I don't think there's a problem putting that reference in there. Obviously, it has an impact on government revenue. Then we go on for more detail later on on that.

**Mr Carr:** Can't we write up what we heard, even if the government wants to be conservative with it, what Mr Brandt said? I'm asking the researcher now whether the numbers could be added up.

**Mr Wiseman:** I just want to be accurate.

**The Chair:** We won't be accurate ever in trying to establish what the underground economy is and how it affects taxes.

**Mr Carr:** But even if we're low and conservative in our estimates, they are estimates.

**The Chair:** I think clearly if it was indicated that it was an estimate based on what the committee had heard and certainly we could put some percentage figures in there.

**Mr Carr:** We heard numbers from a variety of groups.

**The Chair:** We could also put down what we expect the loss in revenues for the province of Ontario might be, so long as we indicate that this is not absolute and it's not accurate but based on information we've received. Wouldn't that be reasonable?

**Mr Carr:** And attribute it to Andy Brandt or whom-ever.

**The Chair:** We would attribute it to all the people that we heard before the committee I think.

**Mr Phillips:** What we heard, and on page 13, what the government figures show us, was that tobacco revenues are down by roughly \$200 million, not necessarily all smuggling, that LCBO, according to Brandt, was badly hit, more than the \$90 million provincial sales tax, let's say it's \$400 million. Then we were told that the income tax is the biggest loss, due to the underground economy. This is just changes in two years. The underground economy didn't start two years ago, so you have to say there was a base before. Others would say, "Let's imagine the base three years ago and let's imagine it's doubled in the last three years." You can see you can get to \$1.5 billion just in terms of the increase in the last two to three years. That's where I get my \$3-billion number. If somebody's got a better estimate, great, I'd love to see it.

**Mr Sutherland:** It's very hard coming up with the exact figure. The decline in PIT and sales tax, I think you can more accurately predict on the tobacco and alcohol where things are at in looking at declining patterns in consumption in those two and then figuring it out.

The PIT and sales tax: It's no doubt that there's a portion attributed to that. The other problem of course we run into is the fact that because of the other factors going in and the economy that, yes, we have growth going on, but the amount of income tax we're even getting from that growth is less because of restructuring going on, that much of the growth has come from productivity gains rather than increases in employment, which obviously has an impact on personal income tax and would have some impact on sales tax.

I have no problem putting a reference in; it's figuring out what you want to do. If you want to take the 7.5% of what that is—I know it's on a federal scale—and if you took a proportion of what that may mean on the Ontario scale and make that as an estimate—

**Mr Phillips:** I much prefer the Ministry of Finance officials give it, but they won't. If you remember the last thing we said to them, "Can you give us an estimate of how much revenue we're losing?" They said, "Yes, we will try and do that," and we got those three numbers from them. So in the absence of the experts giving us some estimates, we're left to our own little devices here.

**The Chair:** I guess that would just indicate again though how difficult it is to come up with accurate



measures of what's lost. I would also like to add that to assume that revenue losses or shortfalls, and let's just talk about beverage alcohol, if it's assumed that all that revenue shortfall has gone to the underground economy, I would believe that to be wrong because often during difficult times people cut back on certain things. Maybe they're just not purchasing as much of that particular commodity. You have to take that into consideration. So to say that shortfall has entirely gone to the underground economy wouldn't necessarily be accurate. Wouldn't you agree?

**Mr Phillips:** Well, I'm trying to be helpful here.

**The Chair:** The committee recognizes that, as does the Chair.

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**Mr Phillips:** What I heard from the ministry officials was that this is a big problem and growing: "The biggest problem is in income tax. We'll try and give you an estimate." On the tobacco one, the number we've got here, according to some people, may be actually less than what's really happened because—so, if anybody's got a better number, let's just put it in.

**The Chair:** As we try to arrive at and establish numbers I guess we certainly have to give a range, because to put one number down would certainly be inaccurate. Even maybe to give a range wouldn't necessarily indicate, in any absolute terms, any accuracy, but it certainly would give an idea or a sense of what the problem is.

**Ms Christel Haeck (St Catharines-Brock):** I haven't been part of these discussions before and I feel a little bit awkward wading in, but I live in a border community and have some sense of what the cross-border economy is; not to suggest that I have an in-depth knowledge, but obviously people do talk to me about some of these things.

This is like trying to pin jelly to the wall, because obviously you don't have any accurate way of determining this and even your ranges may be totally off. I think one of the concerns I have that is reflected in the economy right now is that patterns of use have changed dramatically.

I know, from just even the social events that I go to, people are not drinking hard alcohol, hard liquor, in the way they used to. Wine and other spirits are definitely taking on a larger role in any social event. So when you say that there's been a drop in sales within the liquor control board, I think you have to take that into account. This is true across all of North America.

So I really find it very odd that we're going to end up trying to put some firm number on something where we don't really have a handle on it. I would totally disavow any credibility in this. Anybody who asked me, "Well, you sat on this committee," I'd say: "Yes, and I totally disagreed with some of the comments made because, hey, who's got a handle on it? The experts don't."

Everybody's making—sorry, I'll use my name—everybody assumes they have a crystal ball and has some handle on this. They don't. It's in the mists somewhere. We'd all be making huge sums of money if we could

actually nail it down firmly. So I think that to try to say a range or something, I think that's as much a guess as anything else that you're talking about with the underground economy. You don't know.

**Mr Phillips:** I think we got the answer, so we'll move on.

**Ms Campbell:** Could I clarify what that answer is, that we're not going to add anything—

**Mr Phillips:** I don't think there's agreement on putting it in, so we'll do something different.

**Ms Campbell:** The fourth point was raised by Mr Sutherland concerning the establishment of a cigarette manufacturing facility. I think you were probably referring to the news about the Six Nations?

**Mr Sutherland:** Yes, the one at Six Nations.

**Ms Campbell:** Would you like that to be included as a footnote to the text or to have a line inserted?

**Mr Sutherland:** I think it probably should go right into the text because what it demonstrates is that the whole issue of tobacco smuggling—I guess I shouldn't say that. But just say that the issue of tobacco and the government being able to collect taxes is changing quickly and dramatically, and I think that's why it needs to go into the text.

I would suggest that the best place it may go is just after we talk about copycat cigarettes. Maybe we should put a line or just a separate section that since the committee held its hearings there has been a cigarette manufacturing facility established on the reserve and it's up and in production; then just some reference that this could further have an impact on tobacco revenues for the government.

**Mr Phillips:** That's useful. What page is that again?

**Mr Sutherland:** I would say page 11, just under the new paragraph that we had on the copycat cigarettes.

**Ms Campbell:** The next point: Mr Phillips, in his opening remarks, asked that there be more said on the tobacco issue in the section that begins on page 10. I was wondering if I could get a bit more in the way of direction.

**Mr Phillips:** I don't know what the other members' sense is but I think this issue's getting even more serious than it was when we heard the presentations. My own view is that there's going to be quite a concerted effort required quickly to deal with it. I think we should be highlighting how serious it is even more than we have here, and it's going to be a priority to deal with it.

I go back to my own sense, that I think the government should be encouraged to put together a plan quickly. I'm not sure that plan should include tax reductions but I think they're going to have to put together a plan that deals with the problem and then assess it very quickly. Because if there isn't significant progress made on it quickly, I think we're going to have to look for more significant action.

**Mr Jamison:** Mr Phillips, just a question on that: Is that recognizing the sharing of jurisdiction between the federal government and the provincial government? The various enforcement measures that might be considered

would automatically, I think, include a joint effort. I know there's a joint task force on that at this point.

Again, this issue is evolving at such a great speed that it's going to have to be dealt with in various ways.

**Mr Phillips:** I assume all the players are involved.

**Mr Wiseman:** I don't see in here, either, the comment made by the small—I can't remember the name, but they were saying something to the effect that they were concerned that if you're too successful at clamping down on cigarette smuggling the next thing would be that the local stores would become the targets of even more crime, where they would steal the cigarettes because the underground network is so pervasive now that the demand for cheap cigarettes will continue and that the only way to get them at a price where the underground could still make a profit would be to steal them.

Did we want to flag any kind of comments like that one, in this section on the tobacco?

**Ms Campbell:** This section on tobacco, on pages 10 and 11, is with respect to the size of the underground economy. Then there's a reference further on to the actual taxes. I just wanted to clarify.

**Mr Wiseman:** That may be the better place for that.

**Mr Jamison:** If I might just add to that: I believe that when the tobacco board in the pre-budget hearings made its case it indicated, through its own studies, that if things continued on the way they are now, and there are signs that they're going to get worse with the manufacturing situation, I believe their graph indicated that the size of the contraband issue would surpass legal sales by mid-1996.

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**Mr Sutherland:** Two things. Regarding Mr Wiseman's comments, maybe some reference could be put in under the social concerns. We may want to put it in as, you know, there have been more variety store, convenience store robberies specifically aimed at just cigarettes type of thing there.

Regarding Mr Phillips' comments, and I know we've got to organize here, if we feel the tobacco situation is a significant problem, maybe we should just reorganize the section on key economic sectors and put tobacco first, before the other ones, giving emphasis to the impact, because I know our views have kind of changed. Initially we wanted to say that tobacco is one part of it, and the smuggling, but there are much broader areas of concern in the underground economy. As well as adding on to the initial comments, that may help give that more focus.

**Ms Campbell:** Could I also make another comment? Since this particular section is dealing with what the committee heard in terms of the size of the underground economy, would it perhaps be more appropriate to expand on developments since the committee held its hearings in the section on recommendations at the end? There do seem to be a number of recommendations that relate to tobacco. Would it perhaps be more appropriate to comment on what I sense is a feeling that there's some urgency involved with the issue of tobacco? Would it perhaps be best to emphasize that in the recommendations section?

**Mr Sutherland:** I think that might be a good approach. We kind of generalized our recommendations in what we had, but maybe we need a more specific recommendation regarding the tobacco and some of Mr Phillips' comments that we believe the government needs to have a plan to deal with that in cooperation with the other levels of jurisdiction.

**Mr Phillips:** That's fine. My only hesitation on moving the tobacco one up is that I view the underground economy as a fairly broadly based, significant issue. Then, within it, tobacco has some of the elements of it and then some different elements. I personally would prefer that the report doesn't get seen as a tobacco report but gets seen as trying to deal with a—if you talk to many people in some of the European countries, they will say: "Listen, the people of that country are rich. The country's poor because the people have very successfully developed a black market." My own view is that we're not there but we are heading that way if we don't all appreciate it. Anyway, that's my reluctance of moving it up, but I think it is that tobacco happens to have percolated to emergency—

**Mr Sutherland:** Would you agree then with Ms Campbell's recommendation that we put into "Recommendations" a more specific one regarding that?

**Mr Phillips:** Yes. That's fine.

**Ms Campbell:** Would it perhaps be appropriate to move Mr Sutherland's comments concerning the manufacturing establishment to the recommendations section as well?

**Mr Sutherland:** I would suggest we leave it in the main body, because I'm not sure any of us have any recommendations on what to do with that one at this stage. I think it needs to be noted that it is in the area of future concern.

**Ms Campbell:** Another issue raised by Mr Sterling: He had asked if it might be possible to get more information on the tax status of native people here in Canada with respect to tobacco and alcohol products. Where does the committee see inserting that information, in the section on tobacco under size of the underground economy or in the section on tobacco and beverage alcohol taxes, under contributing factors?

**Mr Sutherland:** I would suggest that you maybe put it on the top of page 12, just after talking about the American side, make reference to what the status is on the Canadian side.

**Mr Sterling:** An alternative might be on page 19, where you're talking about tobacco and beverage alcohol taxes.

**Mr Sutherland:** I guess the only reason I put it back there is because you've already made reference to the issue of the status, certainly from the American side. I may be wrong. I don't believe we make any reference on page 19 regarding the tax status of the natives. If we want to add in a separate section on 19, I suppose you could do that.

**The Chair:** Is there any clear indication of where that should go?

**Mrs Irene Mathysen (Middlesex):** I think Mr



Sutherland's right. I think it flows in at the top of page 12 best.

**The Chair:** Mr Sterling?

**Mr Sterling:** I don't care, as long as the information's in there.

**Ms Campbell:** Perhaps it could be added as a footnote, as opposed to a few lines.

**Mr Sutherland:** Sure.

**Mr Sterling:** The only reason I said 19 was that it seemed if you have all the information about various tax statuses in one area, then it's not assigning all the blame for smuggling to one group or another group. That's why I said 19 rather than putting it in the other area. But you can argue it either way, I guess.

**Ms Campbell:** The next point concerned the issue of security. Mr Phillips referred to the section on page 14 under "Social." That would be the fourth paragraph. Mr Wiseman also made reference to the security issue. The opening lines are:

"Public safety was a concern for a number of witnesses. Members heard of growing crime networks and threats of theft and violence. Representatives from the OPP felt that the penalties for smuggling were minor given the potential for financial gain involved."

Does the committee feel there's more that has to be added to that section?

**Mr Phillips:** I'm probably all right with it. I guess we'll all interpret this in our own way, and I think that is particularly for some areas of the province a big concern. I do think we are seeing that there are networks set up now, business networks to market this stuff that are getting very well established and actually will be pretty disrupted if—

**Mr Sutherland:** I wouldn't mind if we could just elaborate on the theft standpoint. My sense would be that someone reading this and some of the past references to the Akwesasne area would suggest, "Oh yes, the Cornwall area problem that gained a lot of headlines," but I think when we look at the issue of the thefts, I've certainly heard from my own variety store owners in my own riding and I think most of us would have. Somehow perhaps we can elaborate on that so people get an understanding that that's a province-wide problem. Maybe it's implied, and maybe it's just my interpretation of it, but I think it's important that at least that's understood. Maybe the violence aspect in terms of the shootings is only directly related to Cornwall but the increase in the theft problem I think is a province-wide issue.

**Ms Campbell:** There are different levels of violence involved here. Perhaps some reference could be made to that.

**Mr Sutherland:** Sure.

**Ms Campbell:** This is a point of clarification. Mr Sterling introduced some discussion on the concept of tax loopholes and wanted comparisons of tobacco and alcohol taxes in the United States with those in Ontario in the section on page 19 under tobacco and beverage alcohol taxes. You asked if it might be possible to get something more in the way of detailed comparative information.

There is some reference as provided by witnesses to the differences in prices and taxes between Ontario and the United States, but is it the committee's wish to have more detail?

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**Mr Sterling:** Part of the debate on tobacco taxes is that some people are saying that in order to stop the smuggling we've got to lower tobacco taxes. I think it would be important in terms of having the knowledge for that debate to know how much New York state, for instance, is putting on a carton of cigarettes. How much of the tobacco tax in Ontario is Ontario tax and how much is federal tax? How much of the responsibility lies on this government and how much lies on the federal government in terms of the whole taxation issue?

**Ms Campbell:** There's a paragraph on page 20, actually two paragraphs, starting in the middle. The Ministry of Finance did provide some comparative information on other provincial tax jurisdictions, and it did provide a breakdown on the tax components on the price of a carton of 200 cigarettes: "The total cost was approximately \$47.42. The federal share (GST and excise tax and duty) was 39.5%." So there is some in there.

**Mr Sterling:** I don't want to belabour it. I'm sorry, and as I say, I'm coming late to the discussion. I quite frankly think that the information on page 20 would be better put in a table of some sort rather than in written form, so that people can quickly look and find out on some comparative basis, whatever basis is best for the members of the committee.

Two figures are important to me. Number one is the cost of a carton of cigarettes, because that is what is compelling the underground economy, if there is a big difference. What effect can the province have on that cost and what effect can the federal government have on the cost of that carton?

The other figure that I guess is as important to me is the revenue side for the government. How much revenue is this providing to the government? I believe it's somewhere around \$700 million or \$800 million a year. If the government chops the cost by 50%, I assume it's going to lose \$350 million or whatever. I think that's important to know as well.

I just think tables are easier for me in terms of comparative information, to read it off, than the narrative form that you have it in.

**Ms Campbell:** The Ministry of Finance, when it made its presentation to the committee in late October of last year, did include some comparative tables for Ontario with other provinces, as opposed to jurisdictions in the United States.

**Mr Sterling:** But I think other provinces are irrelevant in this. We're talking about an American problem, are we not?

**Ms Campbell:** So the committee would like a table showing—

**Mr Sterling:** I'm just saying what I would like. As I say, I don't know whether the other people want that or not.

**Mr Carr:** I like that too.

**Mr Sutherland:** If you want to put the table in that the Ministry of Finance presented, I think that's fine. There are some references to the cost of Canadian exported cigarettes going across, and the sense that we've been presented is that that's the major problem to this date, those cigarettes going across and then coming back are the real issue, not so much American cigarettes and the price of American cigarettes coming in here. I don't think we heard much information regarding them. So if you want to put that in, that's fine. It does make reference to what the export of cigarettes would sell for in New York state.

**The Chair:** If I may, you do make a good point, Mr Sutherland. In our examination of the underground economy and with regard to tobacco, the comparative prices weren't the comparisons between American cigarettes in the United States and Canadian cigarettes; it was the situation or circumstance of our tobacco and tobacco products going across and coming back into Canada. That was the most important aspect of the whole smuggling aspect of tobacco.

I'm in the hands of the committee, but I think at this point in time to bring in this, which would be indeed new information, before the committee right now as we draft our final report—I don't know if it would be appropriate. I understand that this would be certainly interesting information for people as a comparative of what tobacco costs were. What would the committee like? Ms Campbell would like to know.

**Mr Sterling:** I don't see any great drive for it, so I think we should just drop it.

**The Chair:** Okay.

**Ms Campbell:** My next series of questions revolves around the recommendations section. I was wondering if the committee could respond to some questions found on page 28. In its earlier discussions of what would go in this report, the members went through the recommendations that had been made by the various witnesses. There were three references that were put aside. They all appear on page 28.

The second one dealt with the identification of smuggling as an enterprise crime under the Criminal Code. The members received a memo two weeks ago that provided a definition of the term "enterprise crime." Another memo was provided to the committee today, which is a follow-up on the definition of "enterprise crime." Smuggling has been considered an enterprise crime since the proclamation of federal Bill C-102 last June, so this recommendation is somewhat redundant.

The next one deals with the issue of markings on cigarette packages. There was considerable discussion in committee about the issue of packaging and marking. Members did have some concerns that this was perhaps a federal issue.

The committee has been provided with a memo dated January 25, "Packaging and marking of tobacco products." Contact was made with Health and Welfare Canada, as well as the provincial Ministry of Health, and it was learned, as is set out in the memo, that the federal government sets minimum standards for packaging and

marking of tobacco products. If a province wishes to add on to those minimum standards, it's quite within its jurisdiction to do that. Does the committee wish to make a recommendation concerning marking and packaging?

**Mr Sutherland:** I would suggest that we not accept this recommendation, only because, if I remember correctly, when the testimony came forward, they were talking about specific markings or stickers or labels that are to go right on the package that would indicate that they're cigarettes that don't have to have tax paid on them because they're bound for export. I would suggest again that any marking of that nature is a federal jurisdiction.

I certainly accept what you put forward in terms of minimum standards for other things, but I think anything that deals with export clearly comes under federal jurisdiction. If I remember correctly, that was the main intent of trying to do these stamp markings that I believe had been used in one of the European countries.

1140

**Mr Phillips:** I don't have any trouble supporting recommendation 1. As tough as that's worded, it probably is helpful. The enterprise crime is a kind of thing I can barely understand and it's not central to my thinking. I don't have a problem with Mr Sutherland's explanation on the third one. I don't have any trouble accepting the first recommendation. It would be part of the tax level proposal wording that I've suggested.

**Mr Carr:** I'm just going to comment. I agree, the first one is excellent and should be included somewhere.

**Mr Lessard:** With respect to the enterprise crime, I think it might be helpful if on page 24 or 25 under "Corrective Initiatives in Place" there was some statement that smuggling is now considered an enterprise crime as a result of this legislation, because if the LCBO doesn't know it, then I'm sure many of the other presenters don't know it. It would be helpful to have it in the report.

**The Chair:** Okay. That's been noted.

**Ms Campbell:** Is the committee then agreeable to inserting a reworded form of the first recommendation there?

**Mr Sutherland:** Sure. Have fun.

**Ms Campbell:** Further to the recommendations, they begin at the bottom of page 25. An attempt was made to come up with something that resembled the comments made by members during their deliberations on the recommendations. Is the wording as it appears in the draft acceptable to the committee? I guess another question that has to be considered is the order in which the recommendations will appear.

**Mr Phillips:** Just to start the debate, on an opening paragraph I personally think it's useful to summarize the three things I think we've found, which are: This is a major and growing problem; the solutions are multifaceted. Those are the two things I would say.

**Mr Sutherland:** Maybe you should add the third one which I believe you mentioned earlier, some reference that this shouldn't be considered the comprehensive list of what needs to be done.



**Mr Phillips:** Yes. I appreciate that. I think we should say: It's a major and growing problem. These are our recommendations based on a limited study by the committee.

Then in terms of recommendations, this is where it gets a little tricky probably for all of us. In terms of order of priority, I happen to think the tax level wording that I had is number one. I think the government accountability is number two. The public education one I put further down just because I think there's a lot of cynicism in the public around, "So they're just going to educate us on why we should pay more taxes, eh?" They will, even though I think there are some—

**Ms Haeck:** Do we put in the "eh" too?

**Mr Phillips:** I know. Isn't it awful? I don't want to have to be defending that one, other than it's worth probably having it in.

My other thing is on the tax one. I think this is a two-phase thing. I think we need to say to the government that this is getting serious and it needs a comprehensive plan quickly. The plan could very likely encompass the following suggestions and then we hope the government would review it after a period of time to see whether more action's going to be required or not.

As I said earlier, I'm personally—as an individual and maybe our caucus as well—reluctant to propose tax reductions. I'm basing that on the assumption that we can find other things that tackle the problem, but I think the problem has to be tackled quickly and heavily. I would say: Do these things, review it quickly and if it isn't working then we're going to have to find something more significant. I would move the tobacco one up a little bit.

On the regulation one, there may be enough words in here, but I heard an awful lot about—and I can use these words to expand—we need a really concerted effort to make it easier for business to do business.

If you want my opinion it's taxes, one; government accountability, two; regulation, three. Then I would move the tobacco one up and then I don't care; interjurisdictional enforcement, compliance, education, unemployment insurance, social assistance, in any order we want.

**Mr Carr:** That's fine; I can agree with what Gerry said. The only point is, and I think we already debated it and we're not going to get it at this point, this is where I'd like to put in about the recommendation for no new taxes, no increase in fees, no increase in non-tax revenue, whatever we want to call it—as many definitions.

I think we've already heard that the government side won't agree to that but obviously this is the place to put it. They may have changed their mind in 20 minutes.

*Interjections.*

**The Chair:** Order. I would like to ask committee members, if you're going to make comments, if they'd please get up close to the mike so Hansard can hear them.

**Mr Sutherland:** I think it's probably safe to say that we've got consensus on what's here. I would suggest that we may be struggling to find consensus on the other issues and that if people want to add additional com-

ments, then maybe they should be submitted there.

The only reason I say that is we spent most of the morning finalizing this one. I do think we'll probably need the rest of the time to try and get a handle on our pre-budget report. If any of the three groups want to make additional comments then I think they can submit an additional report on what other advice they want to provide.

**Mr Phillips:** I don't know whether there was consensus on my wording on the tax thing. I'm trying to gather something that all three of us could support. I don't know how you want to deal with that, Kimble.

**Mr Sutherland:** If you say, "There's a general perception and concern about taxation," I think we'll all agree on that. My sense is that is not considered adequate enough. I'm not sure if that's considered adequate enough by yourself, Mr Phillips, but I certainly have a strong sense that's not going to be considered adequate enough by the third party.

**Mr Carr:** You read me right.

**Mr Sutherland:** If you want to put as part of the consensus report a general comment about concern that everyone needs to recognize the taxation stuff as an issue, we can. I think that recommendation we agreed to go in there kind of—while I agree with you the wording is difficult—more or less summarizes that general comment about all governments have to be aware of how far you can go in taxation versus how willing the public will be to comply with the taxation policy.

I'm not sure what else we can put on there that we're going to get consensus, given the fact of how far people want to go on what they want to state.

**Mr Phillips:** Okay, so you would be in favour of the wording on page 27. Is that right?

**Mr Sutherland:** On page 27 or 28?

**Mr Phillips:** Yes, on the fair taxation thing, but not the wording that I've proposed.

**Mr Sutherland:** Yes, I would think a combination of what's on 27, maybe combined with what the recommendation was from—I guess that's the accountants' group, is probably what I think we can agree to.

**Mr Phillips:** Okay. I think we would want to go a step further on that.

**Mr Sutherland:** Sure. If you want to submit that, I think that's fine.

1150

**Ms Campbell:** Just to review the comments that have been made over the last few moments, the committee's consensus is that the recommendation on taxation should be placed first, at the beginning of any list, followed by government accountability and government regulation?

**Mr Phillips:** That's my proposal.

**The Chair:** It would appear that no one objected to that.

**Ms Campbell:** In terms of the recommendation on page 27 under the heading "Fair Taxation," the committee would now like the recommendation, as it appears on that page, combined with the wording that is found on page 28.

**Mr Sutherland:** Yes. My sense would be that both those comments would go under the general title of "Recommendations on Taxation."

**Ms Campbell:** "Taxation," as opposed to "Fair Taxation."

**Mr Sutherland:** I think if we've got a general title of "Taxation," then they can come in as recommendations under that title.

**The Chair:** I think "fair" is an arbitrary comment.

**Mr Phillips:** What about "almost fair"?

**The Chair:** That's almost arbitrary.

**Mr Sutherland:** Just on the "Government Accountability," my sense on accountability is it is the buzzword and it certainly makes sense, but it seems to me the comment about accountability, regulation, and then even the changes to unemployment insurance and social assistance programs could somehow be all incorporated under one title. Part of the accountability comes back to the effectiveness of programs; it comes back to value for perceived money for the tax dollars. Am I on my own on that sense or feeling that somehow they can be incorporated together? It's the value of the service. It's how government operates.

**Ms Campbell:** A general heading of "Government Operations"?

**Mr Sutherland:** I'm just not sure whether that's the right heading, but maybe we can just put it under "Government" in general.

**Ms Campbell:** "Government Programs and Operations," perhaps?

**Mr Sutherland:** Sure, something to that effect, and then try to incorporate those recommendations coming under one title.

**Mr Phillips:** I didn't mind the way it was worded. I thought maybe all three parties might be able to accept it. The tone that I got in the hearings was this "We're mad as hell and we're not going to take it any more" sort of thing. I like the words "consideration given to establishing." I think if people had a sense that their governments were operating within some ground rules about just the financial parameters in which they can operate, they'd feel a lot better. I think the "consideration should be given" gives all three parties the opportunity to then say, "Well, what's the legislative framework we could live with?"

**Mr Sutherland:** I think back to particularly the consumers' association and its presentation. They highlighted some examples that they didn't think governments, not only our government but past governments, were accountable on or could see the benefits of value for money which many of us might see. One of the examples they cited was giving funds to support Chrysler in its expansion in Windsor. They didn't think that was an appropriate use of taxpayers' money.

I don't know if you were still here for their presentation, but I know Mr Kwinter and myself talked about, for example, my own riding in terms of the previous government giving funds to support the establishment of the CAMI automotive plant, and those types of things.

So while I accept the sense of financial parameters, the sense of some of what we heard goes beyond just what the financial parameters are. It's how the money is spent, how the decision-making is spent. Also, I think we're seeing more results, particularly in the education sector, based on the amounts spent. I take all those into an accountability framework, not just the financial parameters.

**Ms Campbell:** So is the consensus that things should be left as they are?

**Mr Sutherland:** If the rest of the committee members are comfortable with that, that's fine. We think it's a little much to put them together, but I would hope that all the government areas could be listed one after the other, anyway.

**Ms Campbell:** One final question concerning the issue of tobacco. There are a number of recommendations that appear on page 27. Is it my understanding that the committee wishes there be some text inserted before the first recommendation stating that the committee recognizes that there have been a number of recent developments concerning tobacco at the federal and provincial levels?

**Mr Phillips:** Frankly, I don't know what the solution is on tobacco. My own preference would be to say that it is clear that this area requires significant and quick action and the following are several recommendations that the committee puts forward for consideration by the government as part of its comprehensive plan, and that we would ask the government to move quickly on it and to review its success in the short term.

I would move that first recommendation down to the end, just because again the public sort of says, "Oh, yes, they'll solve the problem; they'll get somebody else to raise the prices," and it looks like we're always pointing the finger at somebody else.

**Mr Sutherland:** Sure. Okay.

**The Chair:** Does the research officer have enough information to finalize the draft report we have before us, in your opinion?

**Ms Campbell:** Yes. I do have one question. When would the committee like to see a revised edition of the report as it appears now?

**Mr Carr:** Two o'clock this afternoon would be fine.

**Mr Sutherland:** We're going to be meeting for the pre-budget one. We could probably, if we had it a few days before that, take any last glances at it or last alterations before that. Would that still allow time for it to be printed? I would expect we'd want to have the Chair present it when the House resumes.

**The Chair:** I think the directions we've been given have been clear. I don't know that we have to have a meeting other than that every member should get a copy of the finalized draft report, unless there's some problem with that.

**Mr Sutherland:** Well, no. The sense I was getting was that research may just want some final approval given by—I mean, obviously the committee's not going to meet again, but the subcommittee was going to meet



on the pre-budget consultations, and if there were any last comments that needed to be made, they could be made then.

**The Chair:** So we could give it the stamp of approval at that time.

**Mr Sutherland:** Yes.

**The Chair:** Certainly all the members would expect that they would have an opportunity to have a copy of this some time prior to the 17th. So some time prior to the 17th, with a reasonable amount of time to review it, I guess. Does that give you enough leeway, Ms Campbell?

**Ms Campbell:** Well, there is the issue of the pre-budget report having to be done within a similar time frame, but something can be worked out.

**The Chair:** We don't want to unduly burden you, that's for sure.

So at this point in time, we have given final direction to the research officer with regard to finalizing the report on the underground economy. I'd just like to also—Mr Phillips.

**Mr Sterling:** Watch out.

**Mr Phillips:** Pulling the strings there like—

**The Chair:** For some reason I have this strange, great expectation that you're going to move something.

**Mr Phillips:** Your lips weren't even moving when I heard that voice saying, "Mr Phillips."

I gather I've been designated to move a motion here. I guess we need some motion to deal with this stuff.

(1) I move the committee adopt the final report on the underground economy and that the Chair be authorized to present the report to the House.

Listen carefully to this one: (2) I move that the committee request the government to table a comprehensive response to the report on the underground economy within 120 days of presentation of the report to the House.

(3) I move that the committee authorize the subcommittee on committee business to finalize the report on the underground economy.

I think two things: One is I gather from this motion it doesn't preclude the minority or the—

**The Chair:** In fact, just before I indicated that you should move that, I wanted to say that any dissenting reports should be filed with the clerk by Monday, 7 February.

**Mr Phillips:** Monday, 17 February?

**The Chair:** Okay, it will be the 17th, I'm sorry, and that's not a Monday; that's a Thursday.

Any discussion on the motion?

**Mr Sutherland:** Could I just ask about the one point about the ministry responding in 120 days? This is new to me so I just wanted to have some sense as to where that came from.

**The Chair:** It comes from the standing orders.

**Mr Phillips:** It's not even in my writing.

**The Chair:** There's an obligation to ask the commit-

tee members if they would like to have that recommendation moved and accepted. Anyway, the motions have been moved by Mr Phillips. Any debate?

**Mr Sutherland:** That's 120 days, so we're looking at four months?

**Mr Phillips:** Sort of, yes.

**Mr Sutherland:** I'm just trying to think. I guess that would take us into the summer, so I imagine, in terms of the committee, it would be when the House resumes in the fall then. In terms of the committee—

**Mr Phillips:** I'm just carrying out my written instructions.

**Mr Sutherland:** In terms of the committee formally receiving a response though, it probably wouldn't be till September because—

**Ms Haeck:** You never know. We've sat through July before.

**Mr Sutherland:** Okay.

**The Chair:** It would be 120 days from the time that the minister receives the report.

**Mr Sutherland:** Okay.

**The Chair:** All those in favour of the motion as moved? Opposed? The motion is carried.

**Clerk Pro Tem (Ms Donna Bryce):** The three motions.

**The Chair:** The three motions, as read, are carried.

Just for the record, that vote was unanimous. The committee members agreed unanimously on the three motions as read by Mr Phillips.

We are recessed until 2:00 pm.

*The committee recessed from 1202 to 1413.*

#### DRAFT REPORT

#### PRE-BUDGET CONSULTATIONS

**The Chair:** The standing committee on finance and economic affairs will come to order. The business of the committee this afternoon is to deal with the draft outline of the report on the 1994 pre-budget consultations. As always, the Chair is in the very qualified hands of the members of the committee.

I understand that the report is very new to everyone, at least the draft outline is new to everyone. It would probably be proper to go through the report, initially at least, page by page. Any direction or assistance that we could receive from the research officer of course is always appreciated.

The Chair would like to open the floor to the committee members for any comments or questions with regard to the draft outline we have before us or indeed any direction the committee might take at this time with regard to dealing with the draft outline.

**Mr W. Donald Cousens (Markham):** Maybe you can guide me a little bit, Mr Chair. Is the plan that we have this afternoon and tomorrow as well to spend in the preparation of this?

**The Chair:** Yes, that's correct.

**Mr Sutherland:** Then we have one more week for any dissenting reports to be submitted, correct?

**Mr Cousens:** As I see it, what we would do between now and tomorrow is declare our intent, at which time Ms Campbell would go ahead and start working on the report.

**The Chair:** The final report will be given the stamp of approval, if that's the way I should put it, on February 17, when the subcommittee will meet and review the report.

**Mr Cousens:** So our objective, just to be clear on our objective, between this afternoon and tomorrow is to declare our general plan of action.

**The Chair:** And to give, I guess, some consensus direction to the research officer, as opposed to dissenting direction.

**Mr Cousens:** I'm just thinking about taking this as it is now and reading it, and then coming back and working on it tomorrow morning.

**The Chair:** It may be helpful today, though, to go through it page by page. I don't think that would be out of line.

**Mr Cousens:** I find that an honourable suggestion.

**Mr Sutherland:** Even if we haven't had a chance to go through it, I have gone through it and primarily what we have is the list of recommendations from the different presenters. What we could do today is I think it might not be a bad idea if we gave research some sense of our agreement on the outline of how the body of the report will look, as she's presented it through some of the table of contents, and then maybe what we would like done on the taxation issues.

**The Chair:** It seems like an idea for a good start.

**Mr Phillips:** Generally, I think we've boxed ourselves in a little bit, just because the hearings ended late yesterday, finally, with the ministry officials. If we had to do all over again, we probably would allow ourselves a one-week break right now to kind of get our thinking together. The problem has been compounded by dealing with the underground economy this morning, because that was also something that took some of our time.

I think Mr Cousens has the germ of an idea. We should maybe discuss this a little bit today, but I for one have had barely a chance to skim through the thing. My comments won't be particularly helpful, even on format. I think we have to get the framework in place, and then say, "All right, here's the framework."

I can see the first framework is going to be the economic environment. That's fairly easy and that's the thing you've got there and that's probably comparatively non-contentious. Then I'm not sure what the next sections are. I would think personally less time rather than more time today, if there's something useful we can accomplish for a little bit of the afternoon. I think we all might benefit from just going away and putting our feet up and actually thinking about it. That's my own feeling.

**The Chair:** The Chair would like more definitive direction with regard to what we should do. I guess it's true to say that we haven't had much time, if any, to review the draft outline, although it is appreciated that we've received it in such timely fashion.

If we had an opportunity individually to go away and read it through and make some notations, and kind of get a sense of what it was we want to accomplish, tomorrow would probably be more productive than it might otherwise be, but I don't want to preclude any opportunity this afternoon for individuals on the committee to make any comments at this time with regard to the report.

1420

**Mr Sutherland:** That seems fine to me. We certainly have confidence that in terms of the summary and forecast issue, the economic things regarding that, that will all be done fine.

I guess my only comment on some of that, and even under the economic and fiscal policies, is if some of the more generalized comments can be reflected in there. I would appreciate something being mentioned in the report on what some of the forecasters have advised us on how the deficit issue should be handled. We had quite a bit of discussion with them as to how quickly a deficit should be reduced. Should you take a very dramatic action such as I believe the Reform Party has proposed federally, or a more gradual approach and its impact on economic recovery?

Obviously, whatever comments could be summarized regarding general comments about job creation would be important.

Regarding the Fair Tax Commission and the advice we received on that, maybe we could try to lump that into some categories and deal with some of the significant recommendations there. There is this question of going from the property tax base for education to an income-tax-based kind. I'm thinking for the body of the report having some summary of the different comments we heard, different issues that might have been raised regarding that particular issue, and maybe even tie some of the questions around the assessment processes into that.

I'm trying to think what the other major topics were that people commented on. I guess there were some general comments made about people's perceptions of what fair taxation is. I must say I was surprised by some of the comments and maybe it's fair to have some discussion about not all of the parties agreeing that progressive taxation is fair taxation. Maybe some of that debate that went on should be highlighted in the body of the report. If we had some of that summary, if possible, I think that would give a better sense for whatever the final report should put in on recommendations. That would be some of my sense of where we could go on how the report is developed.

**The Chair:** As I listened to the reports made by all those who presented before the committee, it became clear that there are indeed many opinions with regard to what government should do with regard to dealing with their finances. As the Chair, and certainly with every intention of being non-partisan, as I listened, it became clear that there were presenters and people who thought that the direction the government was going in was indeed not that bad, and then there were others at the other extreme who said that what the government was doing was absolutely wrong. Then, of course, there was



almost everything in between.

In writing the report, I would just think it should somewhere be reflected that there was that range of viewpoints, whether that could be made in a paragraph or two, or a sentence or two.

**Mr Sutherland:** We have the economic summary and forecast, and the economic and fiscal policies. Maybe when I mentioned earlier about the deficit, that could be added as a section and maybe a section on what people suggested about spending priorities, just a summary of that.

I think we need to put the big caveat that this wasn't a comprehensive list of presenters. We didn't cover all areas in a detailed way, but maybe some sense of summarizing what we did hear, anyway, on what the spending priorities should be. As to the rest of the groups that have been highlighted, I don't think we'd have too much problem with that fitting into the report.

**Ms Campbell:** I'd just like to remind the members that the recommendations contained within this outline are not an exhaustive inventory of what was said to the committee. There are certainly gaps. For instance, under "Transfer Recipients," on page 13 there is nothing on hospitals; there's nothing under universities or community colleges on page 11.

Also, with respect to the comments made on the Fair Tax Commission's recommendations, I think members will remember that most people who made presentations to the committee did have comments on the recommendations contained within that report. The items that are included in this outline, again, are not exhaustive. There are still a lot of comments that could be entered in here, and it would take time to group them and assign them to the proper categories and then make some sort of general statement, which might require a bit more time in terms of preparation if it's the committee's desire to have some sort of text included in terms of summarizing comments.

**Mr Crozier:** For my information, and perhaps it's like a point of information, what's the real objective of the committee when it comes to this pre-budget consultation? Is it merely to report everything that everybody said or is it to try and glean from that recommendations to the government; therefore, you would accept some and not others? I just don't know, so I'm curious.

**The Chair:** I suggest it should be a summary of all the presentations made before the committee, and as a result of those recommendations, this committee would offer some recommendations supporting—

**Mr Crozier:** Support some of the recommendations and not support others?

**The Chair:** Well, it's a little more complex than that.

**Mr Sutherland:** There are two audiences. One is the formal report, the audience for us, and in terms of the recommendations to the Finance Minister. I think also at times we try and keep in mind that outside people may have an interest in reading this report, either at this time or some time in the future, so we'd like to provide some type of summary and background information so they can make some sense of, "Great, you recommended this, but where did it come up in your hearings?" and pick up on

that. So if we have some summary, it's more or less a combination of both, I would say.

**The Chair:** Any further direction to Ms Campbell with regard to what she might do this evening?

**Mr Sutherland:** I'm debating whether we need to have a complete summary of all the advice we received on the Fair Tax Commission. I certainly think, in terms of the different organizations' sense of what fair taxation is, a summary of that is very appropriate to go in the report. Then I certainly would like on this property versus income—that's one of the most significant recommendations and the vast majority of presenters who commented, commented on that.

I don't know how we could somehow summarize the rest of the recommendations in a very concise, limited fashion, whether we thought the easiest way of doing that may be outside of those issues, attaching that as an appendix to the report, "These were the other recommendations on the Fair Tax Commission proposals." That might be the easiest way of doing it without having the researcher having to go back through all the testimony and sift through it and do it section by section.

1430

**The Chair:** That sounds like good advice.

**Mr Cousens:** I'd like to think about that.

**The Chair:** How much time would you like?

**Mr Sutherland:** We can come back to this tomorrow.

**Mr Cousens:** The Fair Tax Commission raises a lot of questions for me and the worry I have, though there are some excellent thoughts to it, is that the danger is that the government can cherry-pick parts of that Fair Tax Commission report. There's enough in it that they could come along and justify just about anything they're going to do in this forthcoming budget by referring to specific sections of the FTC. That has to be a concern I have. That's purely one of the worries of an opposition member who's been watching government.

**Mr Sutherland:** As I say, I don't have any problem if we come back tomorrow morning and people have given it some thought. I'm just putting out some ideas as to what we could have for the format of the report, and hopefully that would generate people to think about some things this afternoon. Then if they want to recommend other ideas, we can deal with some of that in the morning.

**The Chair:** Do any other committee members have any input they would like to add to this discussion? I get the sense, if there's no further input today, that it would be probably in the interest of the committee to adjourn today and come back tomorrow at 10 am. Is that the sense I get from committee members? I see a lot of people nodding their heads.

Just to go back to the underground economy report, it would appear that we need to have agreement to forward a copy of the report to the Minister of Finance once the subcommittee has seen the final report.

**Mr Wiseman:** Do you want somebody to move that?

**The Chair:** Apparently, we have made some indications previously that the clerk has reminded me of that

the committee had indicated it wanted to forward a copy of the report to the Minister of Finance once the subcommittee had seen the final version. Is it my understanding that there needs to be a motion?

The final report is confidential until it's presented to the House. Well, it's supposed to be confidential anyway.

**Mr Phillips:** Why would the final report—

**Mr Wiseman:** It was leaked yesterday to the paper, for Pete's sake.

**The Chair:** That was the draft so that could be far from being accurate.

**Mr Phillips:** What report?

**The Chair:** We're talking about the underground economy report. We're back to that for a minute. It's not final so if someone would like to entertain a motion to forward a copy to the Finance minister, subsequent to the subcommittee approving the final version, it would be appreciated.

**Mr Wiseman:** I'll move that.

**The Chair:** Mr Wiseman has moved the aforementioned motion. Are all the committee members in agreement? It's carried.

**Mr Phillips:** All these reports are public, aren't they? We're doing all this in public.

**Mr Wiseman:** It's all in Hansard.

**Mr Phillips:** I view this stuff as—

**The Chair:** All this is certainly accomplished in the public eye, but apparently the final report is actually not for public information until the Finance minister has received it, or it's presented to the Legislature so that the members of the Legislature actually have the document before it becomes a public document.

**Mr Phillips:** I'm not sure I understand this. In theory we'll all say, "There, we've agreed to that." I don't want to get into hot water with anybody but I have no compunctions about saying that I assume everything we're doing is done in public here. I'm not going to treat this draft as confidential, because it's in public.

**Mr Sutherland:** I believe, though, if I recall, that some of our report writing we have done in camera in the past.

**Mr David Ramsay (Timiskaming):** Not today.

**Mr Sutherland:** No, not today, but in the past, and I don't know whether it was the tradition around here before we were here, that that was done. I imagine that with some committee reports, given the nature of some of

the recommendations, that may have been adopted somewhere as a procedure.

**Mr Phillips:** I don't want to be in a position, if somebody says to me, "I understand you finished a report on the underground economy," of having to say, "I'm sorry, I can't give you that because it's confidential until the House comes back." That is not how I view it.

**Mr Wiseman:** I would agree with you. I want to make it clear, though, that I would hate to have some of our fellow colleagues turn around and say, "What are you doing, giving that out to the public before it comes back to the Legislature? You have violated my rights as a member by giving this out; shame on you," and all that sort of stuff on the floor of the Legislature come some time in March.

**The Chair:** It's certainly the decision of the committee as to how this is communicated.

**Mr Wiseman:** If we have the unanimous decision of the committee, then everybody wears it the same way if somebody's angry.

**Mr Sutherland:** I have no problem.

**Mr Phillips:** The way I operate, everything's in the public domain unless there is a personality or someone can benefit economically from it, and then we can move into private session. I would prefer to do virtually nothing in private.

**Mr Wiseman:** I would agree with you on that.

**The Chair:** It has been such that this has all been in the public domain, and as the committee has indicated, will continue to be so. I think that message is clear.

**Mr Phillips:** We can open the door to the media. Come on in now, media.

**Mr Wiseman:** It's wide open. They're standing in the hall.

**Mr Phillips:** Maybe we should say we are in private and they'll take some interest in it.

**Mr Wiseman:** It's that open-door policy that turns them off.

**The Chair:** Not all of the committee members were here just a few moments ago, and I want to reiterate that we have agreed to adjourn today and meet back here tomorrow at 10 am. That will have allowed us some time to review the draft report. If there's no further comment with regard to what has transpired here this afternoon or what we might anticipate tomorrow, then this committee stands adjourned.

The committee adjourned at 1438.











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## STANDING COMMITTEE ON FINANCE AND ECONOMIC AFFAIRS

\***Chair / Président:** Johnson, Paul R., (Prince Edward-Lennox-South Hastings/  
Prince Edward-Lennox-Hastings-Sud ND)

\***Vice-Chair / Vice-Président:** Wiseman, Jim (Durham West/-Ouest ND)  
Caplan, Elinor (Oriole L)

\*Carr, Gary (Oakville South/-Sud PC)

\*Cousens, W. Donald (Markham PC)  
Haslam, Karen (Perth ND)

\*Jamison, Norm (Norfolk ND)

Kwinter, Monte (Wilson Heights L)

\*Lessard, Wayne (Windsor-Walkerville ND)

\*Mathysen, Irene (Middlesex ND)

\*Phillips, Gerry (Scarborough-Agincourt L)

\*Sutherland, Kimble (Oxford ND)

*\*In attendance / présents*

### **Substitutions present/ Membres remplaçants présents:**

Crozier, Bruce (Essex South/-Sud L) for Mrs Caplan

Haeck, Christel (St Catharines-Brock ND) for Mrs Haslam

Ramsay, David (Timiskaming L) for Mr Kwinter

Sterling, Norman W. (Carleton PC) for Mr Cousens

**Clerk pro tem / Greffière par intérim:** Bryce, Donna

**Staff / Personnel:** Campbell, Elaine, research officer, Legislative Research Service



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## Legislative Assembly of Ontario

Third Session, 35th Parliament

## Assemblée législative de l'Ontario

Troisième session, 35<sup>e</sup> législature

# Official Report of Debates (Hansard)

Thursday 3 February 1994

# Journal des débats (Hansard)

Jeudi 3 février 1994

**Standing committee on  
finance and economic affairs**

Draft report

Pre-budget consultations

**Comité permanent des finances  
et des affaires économiques**

Rapport préliminaire

Consultations prébudgétaires

Chair: Paul R. Johnson  
Clerk: Lynn Mellor

Président : Paul R. Johnson  
Greffière : Lynn Mellor



since they've sent one in today as well. That could start us off in terms of the forecasting.

Then I would suggest we take a look at the taxation issue. Again, I'll be repeating myself from yesterday and what we talked about: Not only do we need to send a strong message on the tax increases but also on the fees and the non-tax revenue. Since we didn't get those recommendations in the underground economy report, I don't think one night's rest is going to allow us to put that in there. But as a minimum, we can include what we did in the underground economy.

I'd like a strong signal, and we can even word it in a non-partisan way, that the books need to be kept properly. I would even go so far as to blame all governments in the past for the way it's been done, if you'd like. But we need to send a clear signal that in a non-partisan way the old way of doing things is off and trying to con people with the way the books are held is not acceptable in this day and age. I think this committee could and should send a strong signal. I don't know how we would word that, but I agree with Gerry: I think people are expecting that, and if we come out with nothing else, I think that would be a good recommendation, in a non-partisan way.

On job creation, I'd like to go a little further than maybe the committee would in looking at some of the problems. For example, we heard a lot about WCB. I'd like to have something included on that. But my recommendations, which we've outlined, I don't think the government will agree to because we've outlined about a six-point plan to deal with WCB including freezing entitlements, cutting back benefits to 80%, freezing the rates and so on. But I doubt if that will be incorporated. So I'd like to see us take a good hard look at some of the issues in job creation.

I suspect, again, because the government probably will not agree to no increases in taxes or fees or non-tax revenue or whatever, we probably will have to incorporate a minority report to send that strong message as well. Also, because in some of these other areas I think there will be disagreement on things like WCB and Ontario Hydro and employment equity and things like that, in terms of the job creation section.

My suggestion is, let's go through it like we did in the underground economy, see what areas we can agree on and then each of us will put together our own minority report on some of these issues which—again, I don't want to pre-empt anybody and say that we can't get agreement, but I doubt whether you're going to be able to agree to some of the things that I've already talked about.

So let's go through it, see where we can agree and the language we can get, and then together, each of the parties can then put their own minority reports together.

**Mr Sutherland:** I guess I would have to disagree with the assessment that Mr Phillips made in terms that we didn't hear any reasons as to why we couldn't hit the same deficit target that had been projected in last year's budget.

I would say there are a couple of factors. Certainly some of the forecasters came in and said, "You need to

do deficit reduction but you need to do that in a gradual way." The other factor is certainly when the Minister of Finance was here and said that revenues are projected to be \$1.6 billion lower than had originally been anticipated. So I think if you add a combination of that \$1.6 billion, some of what the forecasters said, and I've heard from both sides now, that also they don't want anything done on the taxes or non-tax revenue, I guess that would leave the question then to come back for both opposition parties to say, "Okay, so where are you going to do the expenditure reductions?" and for that to come out.

**1020**

If you add up all the things that're there, I'd think you'd be talking significant expenditure reductions. That's fair enough. I just think that you need to be forthright with folks as to where you suggest that should come about. I just don't think it's as easy as being projected to hit that \$6.8 billion, given we're supposed to be \$1.6 billion below in our revenue to begin with.

You mentioned about the other transfer payments. We're not sure what the federal government is going to do with transfer payments to us and the further impact that may have. So I would say it's not quite as easy as has been presented to reach that target.

**Mr Carr:** I don't think we'll get agreement on that, but what we will be doing is putting in things like that. If we can get agreement on it, some of the things we talked about—immediate freeze in non-profit housing. The subsidy on that is well over \$1 billion a year coming up. That should end. There should be no more non-profit housing.

**Welfare reform:** If anybody saw the last few nights and what's being done—and I say this in a non-partisan way. New Brunswick is making tremendous inroads in that way. You heard the deputy minister saying that welfare's going to go to \$6.5 billion. They are actually doing that. Alberta is scaling back. So we've got a Liberal government in New Brunswick doing it; a Conservative in Alberta that's reducing the number of people on welfare; BC is doing it, a socialist government. We can get into some of the things that need to be done in that area including cutting 16- and 17-year-olds off, more home visits, tighter controls as per the auditor. So if you'd like to get into those things and can agree to them, we are going to be specific in there.

We will also be including things like not driving the private sector out of day care and nursing homes, which is putting tremendous pressure on the public sector. We believe the private sector needs more involvement in the areas, because there will never, ever be enough money to provide for all the services that we need in this province if the private sector isn't involved. So we're going to be very specific. Obviously you're not going to agree to that because the government policy on driving, for example, the private sector out of day care is very clear. I mean, you're doing it now. So you can't see agreement.

It's similar to our last minority report. I don't know how many members of this committee read it, but if anybody read it, it was about 30 pages that I personally put a lot of work into where we were very specific: the elimination of Bill 40, secret ballot provisions for certifi-



cation, ratification strike votes. We're going to call for employment equity to be thrown out, all the things—

**Mr Sutherland:** I'm not sure what they're going to do about the deficit.

**Mr Carr:** Just in terms of everything that we're sending out there in terms of job creation signals, because the problem isn't just looking at our expenses while we downscale the public sector; we have to bring confidence to the private sector to be able to invest. We're looking at both sides of it, so we will be very specific. The numbers are there. All you need to do is take a look at what we spent last year, as an example, in non-profit housing. Had that been frozen and not been done—

*Interjections.*

**Mr Carr:** Well, you guys can disagree; you asked me where I was going to cut. We're going to lay them out. Don't ask for it if you're going to sit there and yip about it then. That's fine. We're going to be very specific.

**Mrs Irene Mathyssen (Middlesex):** Actually, this is very useful. Keep talking.

**Mr Carr:** Read the report. If you read last year's you could have read it. If you read last year's report, we had about 35 recommendations, but we're going to do it anyway. So we're going to be very specific. Obviously we're not going to agree, so let's get on to the report and write what we can. We're going to put it together like we did two years ago.

Our first New Directions paper talked about what needed to be done in terms of controlling spending. Quite frankly, had you listened then, we wouldn't have needed the social contract. But I'm not going to get into I told you so's. The date on that was November 1990, where we told you you can't continue to spend your way out of it. You didn't listen. We can say, "We told you so," now; that doesn't do much good.

We are going to be very specific in terms of what we want to do in terms of controlling spending. I just wanted to put that on the record. It's going to be there like our minority report was last year. This afternoon I'll bring you copies of it, for those who weren't on the committee, because we did 30 pages, very specific about what we would do. I want to be clear. We are not sitting here saying, "Don't increase taxes," and, "You can't cut savings." We're very specific about where we have been and we have been from day one. So you can criticize all you want and say, "We disagree with non-profit or whatever," but the fact of the matter is that from day one we've laid out the areas where the savings could and should come from.

**The Chair:** If I could put some information on the record, I mentioned yesterday to the fact that the government has taken very seriously the concerns of everyone with regard to how the books are kept and how they're reported. I indicated yesterday that there was a committee that was examining this. This committee was in place last year. It included a Deputy Minister of Finance, Erik Peters was actually part of the committee, I was the only member on the committee who was from any of the elected members of the Legislature, and there were a number of private business people there, accountants.

Understand that the way the books have been kept in the province of Ontario for a long time has been very similar and now we're asking for some changes. As all these knowledgeable people got together to examine the format, it became clear that changes were necessary but weren't going to happen entirely easily. There was some agreement on some points and some disagreement on others but I just wanted to make it clear that the government recognizes that there needs to be a different format for reporting, a format that is more straightforward, easier to understand and probably represents in a more meaningful way exactly what is happening with regard to revenues and expenditures in the province of Ontario.

I just wanted to make it clear that this is not something the government has chosen not to do but is doing it, although maybe not as expeditiously as some would like, is examining it and has indicated, as Mr Phillips has told us, although not as quickly as he would like, there are going to be some changes and things will be reported differently in the future.

**Mr Sutherland:** I think it's also important, in this discussion about the books, to remember a couple of things. One, it's important to understand why we had a cash-basis accounting versus an accrual accounting basis. My understanding is that the previous auditor wanted the books done in a cash-basis accounting format and that's why they had been done on that. The new auditor has a different view, given a growing sense of accountability, I think, in the public. He seems to have a stronger support for—I forget the group—one of the accounting groups that has set the standards as to how government books should be kept. I think that's fair enough.

I think we also need to recognize the fact that when you're talking about a corporation, the province of Ontario, that spends over \$50 billion, has over 20 different ministries, you're not just going to change that accounting system overnight. It requires a lot of work, it requires a lot of effort, a lot of planning in each ministry so everyone has a clear handle on what the expectation is, and then just within the Ministry of Finance and how it's putting everything together in the public accounts. You can't just do that.

I think there is a firm commitment made by the Minister of Finance, with the auditor, and agreeable, to have some form of not only going to the accrual basis of accounting and how the public accounts should look—the auditor has some views, the Minister of Finance and the ministry have some views, and there have been some discussions and negotiations going on about what is acceptable and what isn't. That process takes some time too to work through. I know the auditor wishes that those discussions had been concluded and fully put to bed far quicker than they have.

I just think that point needs to be made. It's not an overnight process to change the accounting system for a corporation this size.

1030

**Mr Phillips:** I guess to beat a—I was going to say not to beat a dead horse but I'll beat the dead horse. Only time will tell and I will just say to you that if you want to spend a lot of time I could convince you that the



government has taken the creative bookkeeping to an absolutely fine art for understandable reasons.

I will say to you if this were a company and it reported its earnings on the basis on which the government's reporting its earnings and people bought shares in it and then found that the company was misrepresented, you would be demanding the courts to take action, and I could go through 10 areas.

It's being done because it's desperate to show a lower number on the books, but if any company ever tried to take cash out of a pension fund that has an unfunded liability of \$7 billion—Conrad Black tried to do it when there was an actuarial surplus—but you've actually gone in and the only way you could do that was to pass legislation. You're going to sell these government buildings and then lease them back. You've transferred all the capital debt for school boards on to school boards' books. If any insurance company or any company that sold five-year policies tried to show all the revenue for five years in the year it got it, no accountant would ever sign the books, you'd never get the stock listed in the stock exchange and the shareholders would sue for misrepresenting the profitability of the company. I could go through a whole list of them for understandable reasons. I'm not going to convince you right now but I will say that somewhere down the road, when it's all laid out, you'll say, "I didn't even know all of that was going on."

I will tell when I read the answers I got back I thought good, if you read the answers we are moving to an accrual basis on those things. I thought, "That's great." Then I found out that it's only in the public accounts and next year's budget; 1994-95 is when most of the games really come into play but we won't get those numbers reported properly until—surprise, surprise—September 1995.

I won't convince you. You're committed to the government plan. It will only be over time, when it's all peeled back and you say, "God, I didn't realize all of that was going on," but every creative scheme that one could think of that the financial community understands—as I say, I'm convinced the GO train sales will occur in the next couple of weeks. You understand that GO train loses \$137 million a year—that's what the province subsidizes it—and they will sell their \$425 million worth of GO trains—they're not even paid off yet—the province will take that money and then there'll be a new lease cost against it.

It's not in the books yet but I'm pretty sure you'll see the computers. I think that's why you spent \$4 million to count them, not because you want to count them but because you will sell them and then "lease them back."

That's all I'm saying, every imaginable creative scheme, and the problem is that legally you can do that in the government books. If you were a private sector company you couldn't report the finances, and as Gary said, I'm not saying that previous governments didn't do similar things. I'm just saying it is taken to an absolute fine art and therefore, for me at least, the books are now getting close to irrelevant. You've got to have another set of books which you'll call the public accounts which we'll see in September 1995 to understand the true finances of the province.

You can accept that or reject it and I think we know you've rejected it, but that's how I feel and that's why I think once again it's important to state the need to move as quickly as we can on it.

**The Chair:** We have dealt with some things that are related but probably extraneous to the actual reporting of the report that we have before us. At this point in time we've heard from all three caucuses with regard to how they would like to see changes made to the report. Does the research officer have any questions at this time?

**Mr Phillips:** Have you had enough direction?

**Ms Campbell:** Perhaps I could ask some midterm questions. In terms of the table of contents that appears at the beginning of the document, it's my understanding that the committee is agreeable to having a section on economic summaries and forecasts. I think Mr Phillips had made reference to the point that there doesn't seem to be the divergence in the forecasts there might have been in past years and expressed an interest in making that point in that particular section of the report. The table that was received this morning will be included.

One of the members made reference to the inclusion of Nomura Canada's forecast in the table. My cursory look at the presentation by Nomura did not find a forecast for Ontario in there. There were a couple of tables on Canada, but I don't think there was anything specifically related to Ontario.

The next section is economic and fiscal policies.

**Mr Phillips:** I'm sorry, Elaine. What I said was something a little bit different. I think in previous years the economic forecasters have been fairly consistent. My own feeling is that they each read each other's reports and the government picks one in between because it phones them all. So rather than saying this is different than in previous years, my recollection—and Don, maybe you've got a better recollection than I—is that it seemed to me that even in previous years we were kind of bracketed. Now, it happened they were all wrong, but we were—

**Mr Jim Wiseman (Durham West):** They've been wrong for about three and a half years.

**Mr Phillips:** Yes, they were all equally wrong, I thought.

**Mr Wiseman:** The way they were wrong in 1991.

**Mr W. Donald Cousens (Markham):** They're just optimistic this year.

**Mr Wiseman:** You should have seen how optimistic they were in 1991. Everything was going to be fine by April 1991.

**Mr Phillips:** That's a detail. I would say that I think the government's forecasts look like they're consistent with the private sector forecasters.

**Mr Wiseman:** They didn't calculate the devastation because of your dollar policy.

**Mr Carr:** Well, that's changing.

**The Chair:** Order.

**Mr Phillips:** Don't bait the bears.

**Mr Wiseman:** Not according to Nomura.

*Interjections.*



**The Chair:** If the committee members would make comments relevant to the report, I would appreciate it.

**Mr Norm Jamison (Norfolk):** Actually, we'd like to mud-wrestle here.

**Mr Cousens:** Get hammered another way?

**Ms Campbell:** The next subject heading was economic and fiscal policies. Is it my understanding that the committee is fairly happy with the items listed here as possible points of emphasis? I think there was reference made to the job creation issue that was raised by a number of people.

The issue of the provincial accounting methodology was an issue in last year's report. There were people who recommended that the province move from a cash-based accounting method to one that was accrual-based. Would the committee like some reference made to developments that have occurred since last year's report in that area? I'm thinking specifically of the auditor's recommendation last year and what the ministry officials told us this year.

**Mr Sutherland:** I think that's fair. It was more or less brought up during the committee hearing, so some summary of the comments made would be fine.

**Mr Phillips:** I would like in the report, and we won't get it so then we have to put it in—I would like to say that this year's budget should be prepared on the basis of what the auditor recommended.

**Mr Cousens:** You're not smoking pot yet, Gerry.

**Mr Phillips:** Well, it is cold, and hell may start to freeze over.

1040

**Ms Campbell:** The next section is sectoral issues. On page 6 of the report, there is a question. Representatives of a number of economic sectors appeared before the committee. Do members want separate sections for each, or would they prefer to focus on a few?

**Mr Phillips:** Oh, these are the sectoral ones, aren't they, as opposed to the transfer recipients. Sorry.

**Mr Sutherland:** Maybe we could reduce the number of areas. For example, if we took resource-based industries as maybe one heading, that would combine a few. Hospitality and tourism may combine the foodservice, beverage alcohol and maybe culture in there, although I'm sure some of the cultural people wouldn't like to be totally included in that category, but somewhere either under that or just under service industries. We'd have manufacturing, retail and trucking. Trucking and manufacturing are significantly interlinked, I would say, and then whether we wanted to just do separate retail or not. Just to reduce the number of headings, whatever you can come up would be fine.

I just want to go back to the economic and fiscal policies. Under that are we going to have in the body of the report some discussion on the comments we heard about the deficit and what the approaches should be to the deficit?

**Ms Campbell:** Yes, I have those sorts of comments you made yesterday. You were interested in what the forecasters had said pertaining to the deficit. You also mentioned the comments the forecasters made with

respect to job creation.

**Mr Sutherland:** Okay. Great.

**Ms Campbell:** The next section of the paper is social issues. There were a number of presentations from a variety of groups. It was rather difficult to categorize these comments. They represented a variety of areas.

On page 8 of the outline, there's an italicized statement, "This section will be an overview of all of the appropriate comments/recommendations made to the committee." Is the committee agreeable to that?

**Mr Cousens:** I think you have to, but I think the problem you have is that there were so many cross-sections of ideas. Don't go for length, because they didn't even cover all the issues. If we come out of this thing trying to think we've covered all the issues that are going to be part and parcel of the budget and the budget process, we're fooling ourselves. I think we can indicate we heard from a number of them and they had certain important things to say, they've been considered, and very succinctly bring it down. I haven't heard the other members say this, but I think, don't go for length on this one, because I think we're just building up false expectations and hopes. If we can come up with several meaningful recommendations to the Treasurer that this group in this room agree on, we've done well, and then let's get rid of all the lard and the crud in the report.

**Ms Campbell:** The next section is transfer recipients. That section has been divided into the headings for each part of the so-called MUSH sector. Is the committee agreeable to using those particular subject headings?

**Mr Cousens:** I am.

**Mr Sutherland:** Yes. I know we said on some of the other issues we got quite a difference. I would agree with Mr Phillips's comments that on the transfer payments there seemed to be a general consensus on what the issues and concerns were and what their expectations were. If that can be summarized into one, that's fine; if you want to have it separate, whatever, or a combination of both.

**Ms Campbell:** Perhaps the introductory paragraph could be a summary of the general comments that were made.

**Mr Sutherland:** Sure. That would be good.

**Ms Campbell:** The last section is the Fair Tax Commission report. Is it my understanding that the committee would like a general statement made about the presentations the committee heard rather than going into a tremendous amount of detail about what was said on each particular issue that was raised in the tax commission's report?

**Mr Sutherland:** I would think that there should be at least three topics covered, or a little more detail on three specific subjects, anyway: The question of the property tax base for education versus, if you take it off there, what other bases should you use; a bit of discussion—sorry, I guess I'm going to add four.

First of all, begin with some general reflection of the comments that people made on what they thought progressive taxation was or fair taxation was to them.



Then some question on the property tax base, taking education off of there. Then I would think we should have a bit of a summary on some of the comments made regarding issues that could be generally described as corporate taxation; I guess some discussion about payroll taxes should be referenced there. And then, I would think, a summary of some of the comments we heard about environmental taxes, which to me would also include the carbon, the water and sewer. The rest could be just summarized, as we heard some general comments, some other recommendations, or, as said earlier, just put an appendix outlining what the other recommendations were for the other ones.

**Ms Campbell:** I think I mentioned to the committee yesterday that the information that was presented in the outline in terms of the recommendations made under the Fair Tax Commission report is not at all inclusive. There were many more comments made, but there wasn't time to include them all in here. This would be a rather limited representation of what was said to the committee, if it's the committee's desire to put a document such as this within the final report.

**Mr Sutherland:** I think as long as you make that very clear at the beginning of the section, that this should not be considered comprehensive, that it is just covering some of the major issues.

**Mr Cousens:** We might come to an earlier consensus on the Fair Tax Commission just within this committee, because my feeling is that we don't have any consensus on FTC. The recommendations and the comments cross the whole board, it's so vast an array of opinion and thought processes.

I'd be interested if Gerry would comment on this as well. Though the Minister of Finance invited this committee to review the FTC and come back with some recommendations, I have a feeling that we're not going to find a consensus out of the committee for what we should be doing on it unless we all agree that we should table the whole thing, and that's not fair or true either. But there's just so much to it that to be able to say in this committee in the short time that we have had to look at it—if you look at how much time they spent preparing it, how many pages they've dealt with and how the different groups that made presentations to us had their own biases and they were able to select certain things, for our own research to be able to go back and then compare and check it through is a far bigger thing than we're equipped to do in the time that we've had.

I'm inclined to again suggest that we give it more of a cursory review rather than the detailed, extensive look that we might be inclined to want to do. I'd be interested in some feedback on that because that can give you some direction, Ms Campbell, on limiting the amount. We might well say, "Here is a range of some of the opinions that were presented that take us through this and that," but it exposes the difficulty of trying to come to a consensus on it.

1050

**Mr Phillips:** I agree with much of what Don said. I'm trying to be candid with ourselves. Firstly, it's an extremely complicated thing. The first part's pretty easy. I agree

that we should be reducing property taxes.

Firstly, the committee's set up to do pre-budget, and the Fair Tax Commission is a job in itself. The comments we got back, at least half were on the pre-budget and maybe half on the Fair Tax Commission.

Frankly, I think often as we asked a question, it was clear that, for example, in order to agree we should move to this unit value assessment thing—and I think there are an awful lot of questions there—and say, "Listen. We all agree we should move off property tax," we might all agree, but I think we have a mild responsibility to assure ourselves that the pool we're jumping into has enough water to hold it.

Everybody says, "Take \$3.5 billion off residential tax," but when you start to look at where \$3.5 billion is going to come from, I can't remember hardly anybody who has looked at the true implications of that, other than some people who have really figured it out. I think the city of Toronto figured out its constituency.

I don't think we're shirking our duties to say that we began the discussion on the Fair Tax Commission. It's clear that it's an issue that requires a lot more detail time than we would have, and that while many people came supporting tax reductions in property tax, there are questions being raised about the sources of income. I think I said that in my opening comments this morning on the Fair Tax Commission, that we should acknowledge the complexity of it.

**Mr Sutherland:** I don't disagree with what they're saying. I just think that in the body of the report, anyway, we should have some reflection of some of the various options that were put forward by the presenters. I think the presenters would at least expect that, and I think anyone reading the report would like to have some sense of what people's different reactions are in the body.

I would probably agree with the comments of both Mr Phillips and Mr Cousens that we can't go jumping into this without doing some more analysis of what the full implications are of those things, but we were given some advice by the presenters, and some of that should be reflected in the body of the report.

**Ms Campbell:** Is it the committee's wish that there be a paragraph or two summarizing some of the major issues raised and the comments, such as the issue dealing with property taxes and education, corporate taxation, the payroll tax and some reference to environmental taxes, but that also included in those few paragraphs would be a statement to the effect that the committee has only been able to take a cursory look at the issue of the Fair Tax Commission's report, that there was quite a bit of divergence on the various recommendations put forward by the Fair Tax Commission and that the whole issue requires much more in the way of detailed consideration?

**Mr Sutherland:** Sure.

**Mr Cousens:** If you do it that well when you're writing the report, we'll be okay. But you have to sort of run away fast and do it.

**The Chair:** Fortunately, you'll have Hansard to refer to.

**Ms Campbell:** I have one last question, and that is



concerning recommendations. Is the committee interested in making some recommendations for this report or will it be a mere overview of what we heard?

**Mr Cousens:** The Minister of Finance is not going to resign and the government's not going to call an election, which we could find very helpful at this time.

*Interjections.*

**The Chair:** Is there any further direction that the committee members would like to give to Ms Campbell with regard to the draft report? Any further recommendations?

**Mr Phillips:** The recommendations I would put in—

**The Chair:** Recommendations that all committee members would agree to.

**Mr Phillips:** Yes. They are the overview recommendations, and that is that the economy is hopefully beginning to turn and we need to continue to foster that, that the deficit numbers announced last year should continue to be our target. Then I would use the same tax thing we had yesterday and I would be urging them to move faster on the way the books are kept.

**The Chair:** Are members in agreement with that?

**Mr Carr:** Yes. Then, also, the ones which I don't think they will be are the ones I outlined at the beginning about the tax increases and no fees and non-tax revenue. Obviously, I don't think that's going to be agreed to, and some of the other points I made I don't think will either, but I think I can agree with Gerry's. Could we have some indication from the other side what they feel about some of these things?

**Mr Sutherland:** On the question that the books should be presented in a straightforward way as quickly as possible, a recommendation to that effect, we have no problem supporting that type of recommendation. If we're going to get into specifically when that should be done, then obviously that will pose problems, but I think we all agree with a general recommendation that the books need to be presented in as straightforward a way as soon as possible and in conjunction with the auditor's recommendations on that.

I must say, I still have a dilemma here regarding Mr Phillips saying that it shouldn't be too much of a problem still hitting the same deficit target. The third party has certainly indicated, "We'll outline where all the expenditure cuts come from." That's fair game. I think that's the dilemma. We're \$1.6 billion less in our revenues. We don't know where federal transfer payments are going to be as of yet. I'd say they're two significant question marks that would have a significant impact.

I would certainly agree that the goal needs to be reducing the deficit, continuing a multi-year plan to reduce the deficit, and particularly to get the operating deficit to zero, but I'm just not sure, given also the advice that we received from some of the forecasters who said, "You should be careful how quick you do this because you could still have an impact on the economic recovery if you do it too quickly." I think we heard that from at least two that come to mind, but I think maybe a couple more said, "You need to reduce the deficit but need to be wary of how quickly you do it or you may

have a negative impact on economic recovery." I think that needs to be a priority.

I think also we need to say, in a recommendation—again, we may not agree on how to do this—that job creation does need to continue to be a priority and that 10% unemployment is not acceptable and efforts need to be made to try and reduce that.

1100

**Mr Carr:** The other point I was just mentioning when Kimble talked about the transfers. I heard this morning that the Premier has sent to all the federal Liberal MPs a letter encouraging them to give him more money in transfers. He mentioned a booklet that was sent.

**Mr Wiseman:** Removal of the cap on CAP.

**Mr Carr:** Getting more money for transfers from the federal government is what it is, whatever you want to call it—

**Mr Wiseman:** Restoring the fairness that the Tories took away.

**Mr Carr:** —in addition to what he has done.

I think what he's doing, of course, is the same thing he did with the previous government: Socialists all blame somebody else for all the problems. But not to be political, he did mention that there was a book sent out which outlined that. I was wondering if, through the researcher, Elaine, or even the government, we could get a copy of it. What it was is a booklet outlining what's happened to the transfers over the last little while. I think it would be helpful to get it if we could, and maybe even a copy of the letter that was sent, since it was sent to 97 MPs—96; I guess one didn't quite get it.

**Interjection:** Jag didn't get it?

**Mr Carr:** And the Reform person didn't get it. Just as we're on that, maybe that would be helpful to have. I just thought of it with the mention of the transfers. Because I think what we're seeing very clearly is a continuation of what this government's done since 1990, which is continue to blame the federal government. I think he's already setting them up for the next budget, to say: "Here we are. That's why we have the deficit again. It was Mulroney's fault; now it's Chrétien's and Martin's fault."

That's why, quite frankly, I don't want to give him any more money, because I know what he'll do: He'll spend it, and then some, anyway. I've been very clear about that. Norm Sterling's gone into much detail about how Ontario pays more per taxpayer into the federal government than it takes out, so if in fact more transfers come, all it will mean, the bottom line, is that Ontario taxpayers will pay more.

Notwithstanding that, I think politically the Premier's been very good and been very successful, particularly with the previous Conservative government, which was unpopular, in blaming them for all the problems. I think he's attempting to do it and I think we're seeing the spin already start. I would just like, as a member of this committee, to have a copy of what he is doing. If Elaine or somebody could get that, I think that would be helpful.

**Mr Jamison:** In fairness, I think that just to comment



on the last comment, it's clear that what the Premier is saying is that for mandatory programs, cost-shared programs, the proportion of that share has shrunk dramatically for Ontario while provinces next door, such as Quebec and Manitoba, still receive 50-cent dollars from the feds. We receive 29-cent dollars. That brings up the whole question of fairness, and I believe that is the issue, in clearer terms, that's being put forward: fair treatment by another level of government. Of course, all governments are indicating that there is a need for fairness, and that's the province's point of view, one that's backed up with documentation.

**Mr Sutherland:** That information has all been sent out publicly. It needs to be there. Without trying to get into too lengthy a debate, I would like to support Mr Jamison's comments. What we're clearly asking for is that the cap on CAP—Canada assistance plan programs were started, established, as 50-50 cost-sharing between the federal government and the provinces. The previous government decided that no, that wouldn't be the case, that it would put a cap of 5% limit on the three "have" provinces: BC, Alberta and Ontario.

The impact in BC and Alberta has been there, but not as dramatic, because they have not suffered as much in this recession as Ontario has. As we know, the adjustments to free trade, higher interest rates, a combination of all those factors at once led to a much more significant recession, particularly in manufacturing, in Ontario. As a result of that, the impact of that initiative by the previous government—it was for three years and they were able to complete two years, and now we have the third year coming up—has had a far more dramatic impact on Ontario and as a result has, in effect, been discriminating against the province of Ontario, where the federal government entered into a 50% agreement—50-50 cost-sharing—and has arbitrarily changed that. Now it is only picking up 29 cents on welfare costs and on other costs. The real question here is, how is the federal government going to treat Ontario? What should be Ontario's fair share of a program that is designed to be a 50-50 split between the federal government and the provincial government? That's really what the issue is.

To say that we're asking the federal government to spend more money, no; we're asking them to treat Ontario, as the original program was established, as they would treat any other province with 50%-50% cost-sharing and not to make changes to that in an arbitrary fashion. That was carried out by the previous government and now the current government has an opportunity to change that if they so desire. If not, then our sense is that they will continue on with the same policies as the previous government and they will be taking ownership of that policy.

**Mr Carr:** I don't want to debate it here because we could debate all day, but I will say this: What the federal government has done to municipalities, universities, school boards and hospitals—I will remind you of when the Premier went on TV and said, "We're going to let you go into the next three years with a 1, 2 and 2." The changes he made and the transfers he cut are more than what the federal government—you talk about a 5% cap

he originally promised, then broke that promise and then went to reductions.

So when you're talking about what happened to transfers, what he did to municipalities, universities, school boards and hospitals, his transfer partners, was worse—and I underline "worse"—in relative terms, in dollars than what the federal government did to him. So for this government to continue to blame the federal government when what they did to their transfer partners was absolutely worse—not only that, he went on TV and said: "Don't worry, you're going to have a three-year time frame to plan. You're going to have a 1, 2 and 2 over the next three years," and then he cut the legs out from under them.

They had already made plans. I tell you this: The bottom line is, what happened to the provincial government from the federal government was nothing compared to what this government did to its transfer partners in the MUSH sector. The municipalities and the school boards and the hospitals got worse transfers from this government than what the federal government did to this province.

We can argue this all day. The numbers are there for you to look at. I suspect those numbers will not be in the Premier's brochure. I guess that's where we're a little bit concerned about it. Not only do you blame other levels of government for all your problems; you in fact have lopped all your problems on to the other sector as well. On the one hand I could see you complaining if in fact you'd held your transfers and held your end of it up. You did not.

When you get into things about making welfare easier, where 20% of the cost of that is borne by the municipalities and they have absolutely no say in what happens, I will remind you, the bottom line at the end of the day is that what you did to your transfer partners was worse than what the federal government did to you.

I won't continue on because I know we could debate this for about four hours all day and we won't get the report done, but I would just remind you, that is the reality.

**The Chair:** I thank you for the last comment, Mr Carr, because indeed this isn't relevant to the report we're trying to complete here. However, Mr Sutherland.

**Mr Sutherland:** You did say it was the last comment, but all I want to respond is that the Canada assistance plan agreement was an agreement entered into between the provinces and the federal government. You're quite right that transfer payments to municipalities have been reduced as a result of government revenues being down, but I would indicate to you that the type of formal relationship—

*Interjections.*

**The Chair:** Order.

**Mr Sutherland:** I would indicate to you that the formal relationship of the agreement of the Canada assistance plan is not a similar type of agreement with which transfer payments are awarded to municipalities. My sense is that there has never been a specific set amount as to what transfer payments are. They have been



determined by the government on a yearly basis.

*Interjections.*

**The Chair:** Order, please. I believe then at this point in time we have come close to concluding what we need to deal with. However, Ms Campbell would like to ask a couple more questions for clarification.

**Mr Carr:** I don't think we have agreement, Mr Chairman. Do you?

*Interjections.*

1110

**The Chair:** Order, please. I believe we have a draft report here that is nearly completed and for the most part, if not entirely, is agreed upon by all the members of the committee. Again, I just want to make sure that everyone understands. If there are dissenting reports, that is, information that caucuses would like to direct to the Minister of Finance that are outside of the comments of the report that we will be making, then they must submit the dissenting reports to the clerk by February 17.

Certainly what we're trying to do right now is draw up a report that we can all agree on, and there will be some other comments and dissenting opinions that will be outside of the report we're about to make. I think if we all understand that, then we should be able to come to some conclusion here with regard to this report.

**Ms Campbell:** I'd just like the committee's further direction with respect to recommendations. It's my sense that there may be the two that could be put in the final report, the first being, "The provincial economy appears to be entering a period of growth; however, controlling the deficit and job creation should continue to be goals or priorities of the government."

Secondly, "The provincial account should be prepared and presented in as straightforward a manner and as quickly as possible."

*Laughter.*

**Mr Sutherland:** I guess maybe with that one, we should go a little more detailed than "straightforward manner."

**Mr Phillips:** "Honest"?

**Mr Wiseman:** I think the auditor would have loved that comment.

**Ms Campbell:** If I may, the committee last year made a recommendation in the same general area:

"The Minister of Finance should prepare a simple yet complete economic statement that provides detailed information on all government and crown corporation assets and liabilities. Accumulated deficits must be accurately reflected in both current and capital accounts." Would the committee like to repeat that recommendation in this year's report?

**Mr Cousens:** It's still valid.

**Mr Phillips:** I think the problem is, as you read those two recommendations, they're kind of sufficiently vague that we all can salute it and then say what we really mean in our own minority reports, unfortunately. In fairness to all of us and to the legislative research people, we haven't really seen the reports yet. So I like characterizing this as we're down to crossing the i's and whatever

they do, dotting the t's, but the fact is that we've barely begun to debate the content of the report.

I guess what's going to have to happen, because of our timing, is that legislative research will send the report out as much in advance of the 17th as we can. I think each of us has to anticipate what's going to be in there and then do our own thing, and there we are.

**Ms Campbell:** So is it the committee's direction that there be no recommendations put in the draft that is sent to committee members prior to February 17, that there will be some discussion?

**Mr Phillips:** I think you said you're going to put those two recommendations in, which sound vague enough that I don't disagree with them, but we would go further than that.

**Mr Sutherland:** On the one regarding the accounts, if you want to make some reference to "present the accounts in a way that is agreeable to the Provincial Auditor" or something a little stronger than that, that's probably a little better and gives it a little clearer direction. In the long run, no matter what any of us here personally thinks the books should exactly look like, the person to whom ultimately they have to be satisfactory is the auditor. If we're making recommendations, the auditor is probably the best recommendation you can make.

**Mr Phillips:** But I would be saying that this year's budget should be presented in accordance with the auditor's recommendations.

**Mr Sutherland:** I think you'll have to make that as a separate—

**Mr Phillips:** I realize that. That's why I'm just saying that the rest is like, "Well, after the next election, we'd like them to report the way they should be." That's essentially what they told us they're going to do.

**Mr Sutherland:** The 1993-94 public accounts will be presented according to how the auditor has requested, so I'm sure that'll give a strong indication of where things are at.

**Mr Phillips:** Everything clicks in in 1994-95, all the big crown agencies, the 4,000 people moving over there, blah, blah, blah.

**Ms Christel Haeck (St Catharines-Brock):** As a point of information, I was one of those people who sat on the committee that hired the auditor, and discussion was raised about working with the different auditing departments within the ministries, and definitely Mr Peters committed to work very closely with those different departments, and it was very clear from comments that had been made previously that this was an area that the previous auditor and definitely the acting auditor at that point realized where there were some gaps.

So really for Mr Peters and his, shall we say, relatively small staff to try to make clear to all of the different ministries and the secretariats the range of requirements and for them to bring their records in order and even how they collect information is going to take a bit of time and I think we all have to be realistic. The idea of changing something this large overnight is rather large. The tradition of doing things for who knows how many years

does have to be changed intellectually, emotionally and in the very practical terms of getting it down on paper.

I think all of us are very much on side in making sure that what's been committed to is in fact going to happen, but within those ministries there's got to be a real turnaround.

**The Chair:** Ms Campbell, you've concluded your request for further information? Mr Sutherland.

**Mr Sutherland:** So the subcommittee is going to meet on February 17, right, to finalize it?

**The Chair:** That's right.

**Mr Sutherland:** I know Ms Campbell won't like this question. Do we have some idea as to when members of the subcommittee may have a copy of the draft report?

**Ms Campbell:** I think there was some agreement to Friday, February 11. If it was not possible to get it to the subcommittee members on February 11, would Monday, February 14—

**Mr Sutherland:** Yes, that would be fine by me. I don't know about the other members.

**The Chair:** It appears there's no one overly concerned about that. So February 11 if you can and, failing that, then February 14.

**Mr Sutherland:** I would then move that upon final adoption of the pre-budget report by the subcommittee on committee business the Chair be authorized to present the final report to the House and that the report be forwarded to the Minister of Finance prior to its presentation to the House.

**The Chair:** Did everybody hear the motion?

**Mr Cousens:** I don't think I've got anything against it, but could you read it again just so that I can really get both ears working?

**Mr Sutherland:** I move that upon final adoption of

the pre-budget report by the subcommittee on committee business the Chair be authorized to present the final report to the House and that the report be forwarded to the Minister of Finance prior to its presentation to the House.

**Mr Phillips:** He'll need it for his budget.

**The Chair:** Any further debate? Seeing none, shall the motion carry? Carried.

Is there any further committee business at this time that committee members would like to raise?

**Mr Cousens:** Just on an aside, has the Finance minister indicated when he's going to make his budget? The federal budget's going to come down in February, I understand, isn't it?

**Mr Wiseman:** February 22.

**Mr Sutherland:** I think it's far too early to indicate. The federal minister, while indicating it is in February, has not set a specific date as to when he'll bring his budget down.

**Mr Phillips:** I hear February 22, but is that just sort of people speculating?

**Mr Sutherland:** That's people speculating. I don't believe there's been any formal announcement made by the federal Minister of Finance on the date. It's my sense it would be roughly the same time line as last year.

**Mr Cousens:** When was it last year?

**Mr Sutherland:** I believe it was the second week of May last year.

**Mr Phillips:** I think the thing bumps around. One was April 29 and the rest were early May, normally.

**Mr Sutherland:** Yes. So late April, early May is what you're usually looking at, okay?

**The Chair:** Any further business? Seeing none, this committee is adjourned until the call of the Chair.

The committee adjourned at 1120.











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### STANDING COMMITTEE ON FINANCE AND ECONOMIC AFFAIRS

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Prince Edward-Lennox-Hastings-Sud ND)

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Caplan, Elinor (Oriole L)

\*Carr, Gary (Oakville South/-Sud PC)

\*Cousens, W. Donald (Markham PC)  
Haslam, Karen (Perth ND)

\*Jamison, Norm (Norfolk ND)  
Kwinter, Monte (Wilson Heights L)

\*Lessard, Wayne (Windsor-Walkerville ND)

\*Mathyssen, Irene (Middlesex ND)

\*Phillips, Gerry (Scarborough-Agincourt L)

\*Sutherland, Kimble (Oxford ND)

*\*In attendance / présents*

#### **Substitutions present/ Membres remplaçants présents:**

Crozier, Bruce (Essex South/-Sud L) for Mrs Caplan

Haeck, Christel (St Catharines-Brock ND) for Mrs Haslam

Ramsay, David (Timiskaming L) for Mr Kwinter

**Clerk pro tem / Greffière par intérim:** Bryce, Donna

**Staff / Personnel:** Campbell, Elaine, research officer, Legislative Research Service



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## Legislative Assembly of Ontario

Third Session, 35th Parliament

## Assemblée législative de l'Ontario

Troisième session, 35<sup>e</sup> législature

# Official Report of Debates (Hansard)

Thursday 7 April 1994

# Journal des débats (Hansard)

Jeudi 7 avril 1994

Standing committee on  
finance and economic affairs

Comité permanent des finances  
et des affaires économiques

Subcommittee report

Rapport de sous-comité



Chair: Paul R. Johnson  
Clerk: Lynn Mellor

Président : Paul R. Johnson  
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*1944–1994*

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## LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON  
FINANCE AND ECONOMIC AFFAIRS

Thursday 7 April 1994

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DES FINANCES  
ET DES AFFAIRES ÉCONOMIQUES

Jeudi 7 avril 1994

The committee met at 1537 in committee room 1.

## SUBCOMMITTEE REPORT

**The Chair (Mr Paul R. Johnson):** The standing committee on finance and economic affairs will come to order. The committee is meeting today to consider the report of the subcommittee, and I'll read the report of the subcommittee into the record.

"Your subcommittee met on Thursday, March 31, 1994, to consider the method of proceeding on Bill 134, An Act to revise the Credit Unions and Caisses Populaires Act and to amend certain other Acts relating to financial services.

"Your subcommittee recommends that:

"1. The ministry appear before the committee at 10 am on Thursday, April 28, 1994, to give a background briefing and respond to questions by members of the committee.

"2. Public hearings be conducted on Thursday, May 5, and Thursday, May 12, and that all appointments be limited to one half-hour each.

"3. Clause-by-clause consideration of the bill take place on Thursday, May 19, Thursday, June 2, and Thursday, June 9, if required.

"4. Each caucus submit to the clerk of the committee, Lynn Mellor (facsimile: 325-3505) a list of those they wish to appear before the committee, with addresses and telephone numbers, no later than 12 noon on Thursday, April 7. Upon receipt of same, letters inviting those groups and individuals to make an appearance before the committee will be sent.

"5. A summary of recommendations will be prepared for committee members by the research officer before Thursday, May 19."

At this point in time, it's been indicated to me by the clerk that we have 20 spots on our roster of witnesses and we have 20 groups who have submitted their interest. Therefore, our roster is now complete. However, should there be further interest from the public or interested groups, then we would have to consider that. One of the things we're here to consider today is, would it be okay for the subcommittee to deal with that particular concern?

**Mr Stephen Owens (Scarborough Centre):** From the government's perspective, I think it's fair to say that we had an excellent subcommittee meeting and that we all have our witnesses that we are interested in having on the list. We have set for ourselves quite an aggressive

schedule in terms of committee time. I think it would be the view of myself that it would be better if we limited the list to those that are now scheduled, and if somebody can't appear and there is somebody waiting who has indicated interest, then we could take a look at scheduling them. But I think, because of the tight time lines, we can't open the list or keep adding people.

**Mr Gerry Phillips (Scarborough-Agincourt):** I don't have a problem with that if we say to anybody that we at the very least would take their written briefs and review them carefully, and that if an opening opens up we will accommodate them, but we may not be able to.

**The Chair:** Mr Carr?

**Mr Gary Carr (Oakville South):** Agreed.

**Mr Owens:** Motion to accept the committee report: so moved.

**The Chair:** Mr Owens has moved acceptance of the committee report. All in agreement? Okay.

I'd like to entertain a motion, for the purpose of committee hearings on Bill 134, that the Chair and the clerk, in consultation with the subcommittee, have the authority to make all arrangements necessary for scheduling of witnesses.

**Mr Owens:** I'll move it.

**The Chair:** You're moving that, Mr Owens? Is everyone in agreement?

**Mr Phillips:** Just a real detail, but we're not approving paying for them to come and stuff like that, are we?

**Mr Owens:** No, no.

**Mr Phillips:** This is just the scheduling thing.

**The Chair:** Yes, this is the scheduling.

**Mr Phillips:** Okay, that's fine.

**The Chair:** This is not for payment. So we have an agreement on that motion, then? Carried? Carried.

Any further business of the committee at this time?

**Mr Phillips:** What's next on your script there?

**Mr Carr:** Why don't we just have Lynn talk and cut out the middleman?

**The Chair:** Lynn isn't here, Mr Carr.

**Mr Owens:** The language is similar, though, isn't it? Motion to adjourn, non-debatable.

**The Chair:** Non-debatable. Call the question? Everyone's in agreement. We're adjourned.

The committee adjourned at 1544.

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\*Phillips, Gerry (Scarborough-Agincourt L)

\*Sutherland, Kimble (Oxford ND)

*\*In attendance / présents*

**Substitutions present / Membres remplaçants présents:**

Owens, Stephen (Scarborough Centre ND) for Mr Lessard

**Clerk pro tem / Greffière par intérim:** Bryce, Donna

**Staff / Personnel:** Campbell, Elaine, research officer, Legislative Research Service





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Third Session, 35th Parliament

**Assemblée législative  
de l'Ontario**

Troisième session, 35<sup>e</sup> législature

**Official Report  
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(Hansard)**

Thursday 28 April 1994

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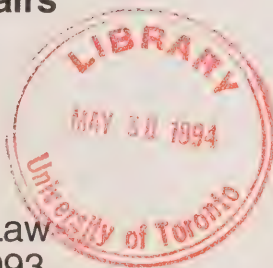
Jeudi 28 avril 1994

**Standing committee on  
finance and economic affairs**

**Comité permanent des finances  
et des affaires économiques**

Committee schedule

Financial Services Statute Law  
Reform Amendment Act, 1993



Loi de 1993 portant réforme  
de diverses lois relatives  
aux services financiers

Chair: Paul R. Johnson  
Clerk: Lynn Mellor

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## LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON  
FINANCE AND ECONOMIC AFFAIRS

Thursday 28 April 1994

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DES FINANCES  
ET DES AFFAIRES ÉCONOMIQUES

Jeudi 28 avril 1994

The committee met at 1020 in committee room 1.

## COMMITTEE SCHEDULE

**The Chair (Mr Paul R. Johnson):** Today we have at least one housekeeping item that we must deal with; that is, rescheduling a committee meeting. Because of the Ontario budget day, Thursday, May 5, 1994, we as a committee will not be meeting and we'll have to arrange for another day to compensate for that.

**Mr Stephen Owens (Scarborough Centre):** I suggest, given that May 5 is budget day, we just drop the hearings into the subsequent dates.

In the subcommittee meetings we had scheduled June 9 as an as-needed day. Perhaps we could just use that as the cutoff day with respect to the clause-by-clause and finishing up the bill.

**The Chair:** Is everyone agreeable to that? Okay. Is it still everyone's understanding that we will do two full days of scheduling of witnesses?

**Mr Owens:** As necessary or as needed.

**The Chair:** We have an agreement then for using June 9 to compensate for the removal of May 5, and we will have two full days of witnesses scheduled if needed.

**Mr Murray J. Elston (Bruce):** Will the government still have the money to carry on after May 5?

**The Chair:** I have no doubt that will probably occur.

We do have one additional housekeeping item and that is the fact that the coalition of caisses populaires and credit unions would like more than we have scheduled, and that's a half-hour, for witnesses. We have a suggestion that we schedule them for a 5 o'clock appointment on one of the days and they then would have up to an hour to make a presentation. I was wondering if that was agreeable to committee members.

**Mr Owens:** I'd like to support that suggestion. If each individual group was coming forward, there would be four presentations, so as the Chair indicates, if we can schedule at 5 o'clock and move till 6, I think we'll be able to accommodate the coalition quite nicely. There has been a tremendous amount of work done by the credit unions and caisses populaires and they feel there's a significant amount of material they would like to present to the committee. I think it will be well worth the time.

**Mr Elston:** I have to oppose, as I may have received a list of all the people who have been put on the list, but I don't have it, so it's pretty hard for me to know how the coalition actually corresponds with other people.

**The Chair:** No one has the list yet actually.

**Mr Elston:** Okay. So I don't have to apologize for

not having it with me then. To be quite honest, I think we should probably take a look at the list. I have no problem in looking at providing extra time for the coalition. In fact I think if there's one thing we have done in this place, unfortunately, it is that we have restricted far too much people who have an extremely important interest in this type of legislation from giving us a full view of what's happening. I agree that we should try to get some more time. To be quite honest, if we could take a look at who's signed up now, we could go over that as another item of business as soon as this is dealt with. I'm happy to see the coalition given more time.

**The Chair:** As I understand from speaking to the clerk, all other witnesses have been agreeable to the half-hour time period. It's been the coalition of credit unions and caisses populaires that has requested additional time because it feels a half-hour is not enough time.

**Mr Elston:** In fairness to a lot of the witnesses, this has happened far too much. It happened before this administration took over, where everybody thought this should be a very efficient sort of process. People are told generally: "You will either get 15 minutes or 30 minutes. How do you like it?" Most think that's their option, and to be quite honest, I think it's part of our committee problems these days, but it's not anything we should argue here. Let's give the coalition some more time, but I would also like to see the rest of the list so we can actually see who's on it and who's not on it.

**Mr Owens:** The deadline is 5 o'clock today and we can either have a conference call or get ourselves together on Monday after question period and review the list as has been confirmed as of 5 o'clock today, if that's acceptable to you.

**Mr David Johnson (Don Mills):** These are the people who responded, and the coalition is here.

**Clerk of the Committee (Ms Lynn Mellor):** Yes.

**Mr David Johnson:** So there are four groups that want extra time.

**Clerk of the Committee:** Yes. They were members of the coalition.

**Mr David Johnson:** They're all members of the coalition. There was an organization representing the smaller credit unions. I guess that's number 6 here, Ontario Association of Small Credit Unions. You're telling me that they didn't ask for additional time then.

**Mr Owens:** They did.

**Clerk of the Committee:** They did originally.

**Mr Owens:** If I can maybe just doublecheck with

ministry people, is the association of small credit unions not part of the coalition as well, or is this an independent—there are two independent groups.

All three parties have agreed that we would like to get this wrapped up and back into the House for third reading, and that while we certainly want to be generous and we want to get as many people in for as long as they need to speak, we do want to get the bill back.

**Mr David Johnson:** Sure, we all want to get this through, but democracy is a wonderful thing and we want to hear from these groups. I think Mr Elston's comments are somewhat appropriate that sometimes it appears you have no choice.

We are hearing two days, so one group could have 5 o'clock one afternoon, the other group 5 o'clock the other afternoon. But are there other groups that may want a little extra time? We may have the time, you know, without getting into a panic on this, if we have two public days.

**Mr Owens:** I don't think anybody's getting into a panic, Dave. I think we want to ensure that given the agreement with, again, all sides of the committee and with the industry that we need to get this done, it's important that we do at the end of the day finish the bill. We're not trying to restrict time. If it's available, yes.

**Mr David Johnson:** It's also important that we give people the opportunity to be heard.

**Mr Owens:** If the time is available, then we don't have any difficulty in scheduling people.

**Mr David Johnson:** I think the best course of action would be to somehow communicate with the groups or understand what groups want and then try to schedule that in. That may be all possible, and that would include the coalition getting more time. I think it may include the association of small credit unions getting a little more time as well.

**The Chair:** Mr Johnson, if I could just remind you that we as a committee agreed that we would have two days of hearings, that becomes a finite amount of time, and how we divvy that up I guess is more the question than anything.

**Mr David Johnson:** Sure, but hopefully we can divvy it up so they can get the time they need and that will happen.

**The Chair:** That would be most appropriate and agreeable. I have no doubt.

**Mr David Johnson:** I'm sure we'd all seek that objective.

**Mr Kimble Sutherland (Oxford):** If we have a shortage of time, of course we could change our minds and sit next Thursday morning and that would allow more people to come in.

**Mr Elston:** I'm happy to be here. Some other people were not as happy to be here, but the opposition party will be here, the Liberals will be here on Thursday morning if you want to do it.

**The Chair:** I would remind members that there is an opportunity for lockup for a pre-examination of the budget.

**Mr Elston:** I understand that, but the offer has been extended by Kimble, and, listen, I—

**The Chair:** No, just in case members forgot, I just wanted to let you know that. If the committee wishes to have witnesses before the committee next Thursday morning, all the members have to do is agree to that.

**Mr Gary Carr (Oakville South):** Being somebody who was there in the beginning, the reason we didn't want to give the smaller credit unions extra time is because it would set a precedent. If we'd done it to one, I think the precedent has already been set, and they have a long presentation. I think I made the point in the subcommittee, because they'd gone before Mr Cousens and done a long, wellthought-out presentation.

1030

I think Mr Johnson's suggestion would be appropriate. We don't need to extend the number of days. Let's just add the other group, the smaller credit unions that want the extra time, on one of the days past 5 o'clock as well. Let's do it with the other folks who would like that time, and the case is fairly simple. We'll just go a little bit longer in the day and keep the same amount of days, those two groups, because we can't now go back to the smaller ones that requested first and say, "I'm sorry." That would be my suggestion and we're off and running.

**Mr Sutherland:** Can I just get clarified, though, what he's saying. By sitting longer in the day means sitting till 6 o'clock, or does he mean sitting past 6 o'clock?

**Mr Carr:** No. Most days have been only scheduled till 5 o'clock, so we go till 6.

**Mr Sutherland:** That's fine, that's no problem.

**Mr Carr:** We'll work a full day.

**Mr Sutherland:** There's no problem sitting till 6.

**The Chair:** I would just remind the committee members that we have a number of people who wish to be before the committee and they would all like more time. Very directly, they would all like more time, so what we have done as a committee is we have tried to fairly appropriate the time to the witnesses, and I think we've done that reasonably. I think we've honoured their requests up to this point in time, and probably we should live with that and get on.

Is the information clear to the clerk?

**Mr Carr:** As clear as it ever gets around here.

FINANCIAL SERVICES STATUTE LAW  
REFORM AMENDMENT ACT, 1993  
LOI DE 1993 PORTANT RÉFORME  
DE DIVERSES LOIS RELATIVES  
AUX SERVICES FINANCIERS

Consideration of Bill 134, An Act to revise the Credit Unions and Caisses Populaires Act and to amend certain other Acts relating to financial services / Projet de loi 134, Loi révisant la Loi sur les caisses populaires et les credit unions et modifiant d'autres lois relatives aux services financiers.

MINISTRY OF FINANCE

**The Chair:** Our next order of business is indeed Bill 134. We have a briefing by the Ministry of Finance, and our first remarks are from Mr Steve Owens, parliamen-



tary assistant to the Minister of Finance.

**Mr Owens:** I'm hoping we can do something about the noise outside so that we can all hear each other without having to yell.

I welcome people to committee this morning. I'm pleased we're finally able to be here today, and I don't propose to repeat verbatim the points that I made during second reading of this bill in the House, but there are some things that are important to repeat, as well as to perhaps make some comments on some of the issues that were raised during the second reading debate.

It's important that members of the committee and the community understand the reasons for the passage of this bill. Clearly we want to strengthen the ability of Ontario's financial institutions to compete and grow in the marketplace. We want to strengthen the ability of Ontario's financial institutions to contribute to the economic development in communities across the province. We want to ensure that our regulatory and prudential controls keep pace with our reform initiatives so that the Ontario public remains protected and the government uses its regulatory resources in the most effective way possible and, finally, to ensure that in all we do the interests of Ontario consumers and depositors are protected.

I also want to address, as I mentioned, some of the issues and concerns that were raised during second reading. I felt that the discussion that took place at second reading was both constructive and helpful, and I do want to take the opportunity to welcome Dave Johnson, the member for Don Mills, to the committee. His input will be much appreciated.

In terms of the cooperative and constructive approach that has characterized Bill 134's progress so far, I've also asked staff to discuss the directions we're considering taking in the regulations which will supplement the legislation. I hope this will help the committee get a fuller picture on how Bill 134 will operate.

With that, I'd like to touch upon some of the key issues that were raised during second reading.

Firstly, there was some concern raised about our proposal to let credit unions issue shares to the public. Questions were raised like: Would this change the character of credit unions and member ownership? Would credit unions be subject to hostile takeovers? How would the public be protected?

I think most members would acknowledge that all financial institutions need capital to grow, to develop, to ensure solvency and to support their lending. The credit union movement certainly made it clear to us that they need the ability to issue shares to the public.

But I do want you to know that the new shares will be non-voting, non-membership shares. The principle of one member, one vote will still define credit unions and caisses populaires in Ontario. Credit unions and caisses populaires themselves will decide whether to issue shares and they will set out the restrictions and conditions attached to these shares.

If a credit union wishes to issue new shares only to its membership, there will have to be an offering statement approved by the director of credit unions and caisses

populaires. This is used quite successfully today in other cooperatives. If a credit union wishes to sell shares to the general public, it must comply with all the requirements of the Securities Act.

These features will (a) help credit unions raise the capital they need, (b) preserve the unique nature of the credit union movement and (c) provide the public with a high level of protection.

With respect to the questions raised on the impact on smaller credit unions, the question again: Would the bill have the effect of driving small credit unions out of the field? I guess the issue with respect to the smaller credit unions: Does this bill favour large credit unions?

Bill 134 is designed to strengthen the ability of all credit unions, large and small, to operate in the marketplace as they choose, given the interests of their membership. The legislation is both enabling and empowering. It provides credit unions with the tools they need should they desire to enter new lines of business; it does not require them to do so. Small credit unions have successfully carved out niches and can continue to do so.

In fact the bill contains a number of features that will be particularly helpful to the smaller units. The expanded role of leagues will enable smaller credit unions to participate in larger loans through syndications. Leagues will be permitted to issue shares to members of credit unions and will be able to use the money raised to support credit unions with lower capitalization. The regulatory and approval system is being streamlined, which should lower costs for smaller units.

Members will know that the financial services marketplace is highly competitive and is changing rapidly. Members will also know that the number of small credit unions has declined over the years as a result of amalgamations, plant closures and changes in the community's membership. These changes are not driven by legislation. In fact our legislation should strengthen the system, small and large credit unions, as it faces the marketplace.

Another issue raised at second reading was whether the identity of credit unions would be diluted by the provisions of the bill allowing credit unions to expand their membership base. Our proposals are designed to strike the appropriate balance between flexibility and maintaining the credit union's identity. Credit unions need the flexibility to respond to the changing population patterns and to respond to clear cases of consumer demand without having to go through a complex, time-consuming regulatory practice.

We want to ensure that a business or a person living "on the other side of street" of a credit union's bond of association can become eligible for membership. Under the current system, it can take up to a year for these membership changes to go through and, in our view, that's far too long.

We want to prevent dilution of membership as well. Please note that Bill 134 provides that a credit union's board can accept potential members up to only 3% of the current membership base. Members within the original bond of association will still clearly control the institution. Also, Bill 134 requires that any significant change



to the bond of association will continue to require approval of the membership.

Again, it was noted during second reading the area of insurance retailing by credit unions was an issue of concern for credit unions. Bill 134 takes a somewhat different drafting approach than the federal government to achieve the same result. As members will know, the issue of insurance retailing by deposit institutions is a particularly sensitive issue in the financial services sector.

Members will also know that the bulk of the financial services sector is regulated by the federal government. In their financial reforms of 1992, the federal government established the benchmark rules in the area of insurance retailing by deposit institutions. These rules permit deposit institutions to undertake certain authorized insurance activities, but by and large prevent them from selling or promoting insurance in their branches.

These federal rules are detailed, complex and, as I have noted, have become accepted marketplace standard. When we introduced Bill 134, we made it clear that our goal was equivalency with these marketplace standards. We would permit credit unions to undertake the same kinds of activities that banks and trusts could, but no more than that.

1040

We also made it clear in this area, and indeed in all of our financial service reform efforts, that we did not want to build in statutory barriers that would be difficult to move in the future. Members will know that it's taken nearly 20 years to change the Credit Union and Caisses Populaires Act, and this wait has not been helpful to the movement. Members will also know that the federal government will be reviewing and amending their financial services legislation in 1997. If we build barriers into our credit union legislation now, we could be hurting our own provincial financial institutions in the future as their federal competitors gain more powers.

In Bill 134, we have built a legislative framework that does two things:

(1) It provides that credit unions cannot undertake insurance activities unless those activities are prescribed by statute.

(2) It provides a sufficiently broad range of regulation-making to allow us to match the federal rules in this area.

I am very pleased to say to you that after nearly six months of detailed discussions with the movement and with the insurance industry, we have been able to satisfy all parties that our goal of equivalency with the federal rules has been satisfied.

In terms of life agent reform, members will know that Bill 134 contains three important components. I've spoken of the credit unions and caisses populaires reforms, and the bill also contains significant amendments to the Insurance Act and to the Securities Act.

Both sets of reforms also reflect the government's commitment to modernizing Ontario's financial services legislation, strengthening the ability of the industry to compete in the marketplace, and ensuring the public is protected through the most efficient and effective use of our regulatory resources.

The amendments to the Insurance Act reform the regulation of life insurance agents in Ontario. Bill 134 establishes a legislative framework that will enable us to introduce a higher standard of education in the industry; adopt a more flexible licensing system with more targeted standards and requirements for agents; allow greater flexibility in the life agent workforce to allow the industry to better respond to changing consumer demand; strengthen consumer protection standards in this industry through a variety of means, including an agents' code of ethics; and clarify and strengthen the industry's responsibility for the conduct of its agents.

Many of our life agent reform directions will be put in place through regulation. Again, I have asked staff to go through the initiatives in detail with you today.

These life agent reform are the product of at least four years of consultation with the industry, with agents and consumer groups, and they represent much-needed amendments to the Insurance Act. I will say that it's taken approximately 40 years for these changes to be made.

The third part of Bill 134 will strengthen the framework of securities regulation in Ontario. The Securities Act has not been rewritten since 1978 and has not had significant amendments since 1987. Since then, our capital markets have evolved rapidly with constant innovation. These amendments will update some important parts of the Securities Act and are intended to enhance confidence in Ontario's markets as a safe place to invest.

Bill 134 updates the Ontario Securities Commission's power to investigate alleged misconduct and its remedial powers to deal with misconduct when it's found.

The amendments also provide the Ontario courts with new powers where there is a breach of the securities laws. These amendments will permit the OSC to fully recognize self-regulatory organizations such as the Investment Dealers Association of Canada and to assign to them registration responsibilities, subject to oversight by the OSC.

The bill also amends the Toronto Stock Exchange Act and the Toronto Futures Exchange Act to extend disciplinary jurisdiction of the exchanges.

All of these securities amendments in Bill 134 will further enhance the effectiveness of securities regulation in Ontario. It will further help to ensure that Ontario remains as a centre of capital markets in Canada.

With respect to the omnibus nature of the bill, there was a question raised on the bill and perhaps what is the central theme and, thirdly, would the government consider other financial services amendments?

On the last question, absolutely. The government will introduce amendments to the Insurance Act in response to requests by the farm mutual industry. I believe that both parties will be able to support the amendments we have developed in consultation with the Ontario Mutual Insurance Association.

Like credit unions and caisses populaires, Ontario's 51 mutuals are based on the principles of cooperation and self-help. They are owned by their members and they play an important role in the economy of communities



across rural Ontario. Like credit unions, they face statutory restrictions that are limiting their ability to compete in the marketplace and their ability to serve their membership.

At the start of clause-by-clause hearings in this committee, I will be tabling motions to amend the Insurance Act portions of Bill 134 to make a small number of very important reforms which will strengthen the ability of farm mutuals to remain competitive and, at the same time, ensuring that our prudential controls remain strong to protect Ontario policyholders.

I know that farm mutual insurers have been speaking to members on both sides of the House about the amendments they're seeking and I'm pleased that both opposition parties have indicated support in principle for such amendments.

Again, in terms of briefing both government colleagues and members of the opposition, we will certainly endeavour to do that before clause-by-clause.

As you can see, Bill 134 is a large and very complex piece of legislation. It deals with important matters affecting the vitality of financial institutions in Ontario and addresses a range of issues that have gone unresolved for a number of years.

Since the bill was introduced in December 1993, we have been consulting closely with the industry, and the response to the legislation has been very positive.

In their review of this complex statute, groups such as the credit union-caisse populaire coalition and the Canadian Bankers Association have made a number of very useful suggestions about how this bill can be improved. We've considered these suggestions very carefully.

I want to let members know that we'll be coming forward with a number of proposed amendments to the bill which make an already strong piece of legislation even more effective. It is the plan of myself and my government to send the proposed amendments to the opposition members of this committee early next week so that members will have an opportunity to review and ask questions before clause-by-clause begins.

When I moved that Bill 134 receive second reading, I noted that Bill 134 was a step in our efforts to reform Ontario's financial services legislation. Bill 134 is not intended to be comprehensive financial services reform, for, as members all know, there still is a huge task ahead with respect to this issue and could not be included in a single bill. Bill 134 is a first step and it is a significant step.

Other work remains to be done, and I know that members have asked and will continue to ask about work with respect to the loan and trust reform. Let me say that we have been working very closely with the trust industry to identify reforms that will help them play a stronger role in providing capital for business growth and development in Ontario.

Our talks with the industry have been very useful and they have helped us clarify and develop our policy. I hope we'll be in a position to move forward on loan and trust reform in the near future. I understand that the loan and trust industry will be making presentations at this

committee and I'm looking forward to hearing their representations and listening to their suggestions.

At this point, I'm going to leave off and ask that staff begin the technical briefing.

**Mr Elston:** Mr Chair, it may be okay for Mr Owens to ask if his staff can start, but I would like to make a couple of comments about his introductory remarks first.

**The Chair:** By all means, Mr Elston.

**Mr Elston:** He's gone through a list of I think some of the items that we raised during second reading debate. One of the items that I had asked for, before we get into the technical briefing around the bill, was the briefing on the status and health of the credit unions and caisses populaires, because I think it's extremely important for us all to know that all are now in a good, healthy condition financially. As you know, through the early 1980s, starting in the 1970s for some and through the early 1980s when the high interest rates hit, some were caught. There was a new attempt to try and stabilize their financial circumstances.

I'm wondering, Mr Owens, if you would be prepared to allow Harvey to give us the certificate of approval of the financial health of the credit unions and caisses populaires so that then we can dispense with that as an issue, because it really is an issue when you talk about expanding services. I don't know of many credit unions whose members don't come into their meetings and say, "Are you sure we can actually do this to the people who are advocating expanding the menu of services?" So, for us, it's important to get the Good Housekeeping seal of approval, and perhaps if we could start there and then go into the bill, that would dispense with some of the issues, anyway, around some of the sections.

**Mr Owens:** I would like to thank Mr Elston for his question. It is an extremely important question. I'll turn the floor over to Harvey Glower from our ministry.

**Mr Harvey Glower:** I'm going to just give you a very brief outline which dates back to 1985. Since 1985, it's our view that the system's stability has strengthened quite significantly. The assets have more than doubled, from \$6 billion to over \$12 billion; the reserves and the capital in credit unions and caisses populaires have grown from less than 1% of assets to over 4% of assets; and since 1987, as well, both the number and the size of the deficits in the system have declined.

#### 1050

In 1987, for example, there were 90 units with deficits of approximately \$87.5 million and between 1987 and 1993 we had identified approximately 90 new deficits. As at December 1993, however, we now have 59 units in surplus, 51 units were merged, 63 units are currently under dissolution and then of that total of 182, there are only nine units in deficit presently with a total deficit position of \$1.4 million out of a total asset base of \$12.5 billion.

So the surplus in credit unions and caisses populaires right now is 3.36%. That compares extremely favourably with trust and loan companies of 0.73% and with the chartered banks of 2.97%.

**Mr Elston:** The reason we're sort of getting into this,



of course, is the whole issue about who's going to be propelled to do certain things, because there is competition inside the leagues and the organizations, as you know. Can you give us the number of credit unions, that now exist?

It's my abiding interest, and it was when I was over at the ministry, in seeing what I thought was an unfortunate decline in the number of units, that there appeared to be a drive to, rather than stabilizing and achieving good local representation in the credit unions, achieving a much easier regulatory framework for managing local organizations, ie, it's better to have one bigger one with several outreaches than it is to have a whole lot of small ones. That has been my position. You and I have talked about it, and I used to talk a lot to OSDIC about it because I felt that it crashed and burned too much. I thought it was actually removing some of the independence of the credit union movement, and I still believe that now, because it's my view that a number of people, unfortunately, are being forced to amalgamate when they could be renovated.

That's a bias of mine. I fully admit that. But I need to see what the numbers are like, because it's my view that the numbers of independent credit unions, that is, independent in the sense of having their own operation as opposed to being merged or amalgamated, are declining, and this ought not to be, in my view, the public policy of the province. I think we should have the independent organizations, if possible.

**Mr Glower:** There are a number of issues that you've raised. Just to give a bit of a highlight in terms of the composition of the various groups, Credit Union Central of Ontario currently represents 440 credit unions with 745 business locations, so that would include branches.

La Fédération des caisses populaires de l'Ontario, which operates primarily in eastern and northern Ontario, currently has 43 units with 66 locations, and I think they've only declined by one over the last five or six years. L'Alliance des caisses populaires de l'Ontario currently has 14 units—they've increased by one—with 23 locations, and the Association of Credit Unions, which are primarily large independent credit unions who are not associated with any league and other unaffiliated credit unions, has 32 units with 102 locations.

The primary decline, therefore, has been in the members of Credit Union Central of Ontario. A lot of that has been due to the deficit units. Of the nine deficit units today, eight of them are still members of Credit Union Central of Ontario.

In the majority of the cases, even over the last number of years, it's been Credit Union Central of Ontario's policy to work with the deposit insurer to prepare the plans as to whether one of their members would ultimately be merged, amalgamated or dissolved. In the majority of the cases, even though there's been a decline in the number of units, the asset transfers that have taken place have been with other credit unions so that there is a very small amount of assets that are lost out of the credit union system to somewhere else.

The asset base and the membership base: The membership base has remained relatively flat because of increases

and decreases, but the asset base has grown. As I mentioned, it has doubled. So we are not losing assets even though there have been deficits and ultimately mergers and asset transfers.

**Mr Elston:** We could probably go on with this for some time. Harvey and I, and others, have on some occasions.

I regret that the test is becoming asset-oriented as opposed to service-oriented, which of course is what the nature of the credit unions is. I know all of our sense of strength has to have some kind of benchmark for us to proceed on. I understand that the renovation plans which were put in place in the 1980s all tried to elevate the level of reserves and the whole thing, but for me, a measurement of success in the credit union organizations and the caisses populaires should not be first and foremost the size of their asset base or any of that. It should be in the ability, which is where they came from initially, of the organizations to regionally or, in the best sense of the word, parochially manage financial matters for their local citizens.

I see us being driven far too much at this stage by trying to implement an easy template for regulation of them, and as a result, losing or taking from them their ability to be flexible and independent in the way they issue credit to their members. That's really been their chief and most beneficial function to this point, being able to manage in a more personal and personable manner in smaller locations the credit issues of the area.

I just raise that as a big concern, because when you take a look at what's happening, it's making a lot of the organizations, particularly the larger organizations, look very much just like another bank, if they happen to have large assets, or just like trust companies if they happen to be more mid-range size. I just want us to be careful, because while Steve said, "We're not changing the nature of the credit unions," I have a view that it isn't going to be easy for them to remain in their same characteristics for very long with the way they're being moved.

**Mr Glower:** If I could just make a couple of comments, I think most of the credit unions and caisses populaires would probably argue that we've provided them with an easy template. If anything, I think we've been fairly vigorous to a certain degree in limiting their growth to the extent that they have their surplus and capital built up. Even though their assets have doubled, as I pointed out, their reserve, which is their strength, their actual base is what has increased. When you actually add in the equity shares or their membership capital base, they are at approximately 3.94%, and that's starting from a base of about 1% in 1985. So that's been significant.

In spite of our regulatory prudential nature, the loan growth—well, it's primarily in the loan growth. I guess it's our view that they're really still serving their members. That's probably evident from the fact that their asset base has grown so much and that obviously they are still providing a very useful service and a very important market niche.

Their ability to identify their members' needs is also evidenced in their very low delinquencies. I'm sure most



people, whether it's from their own personal experience or reading in the press, would know that the loss experience in credit unions is nowhere near what we read about for the banks and the trust companies and their other competitors.

**Mr David Johnson:** From the numbers that you gave us, we are looking at just over 500 units, Credit Union Central, caisses populaires etc today. Is that correct?

**Mr Glower:** It's 520.

**Mr David Johnson:** If we were to go back 10 years ago, what would that number have been at that point?

**Mr Glower:** It probably would have been about double; about 1,000 units 10 years ago.

1100

**Mr David Johnson:** There has been quite a shrinkage, through amalgamation primarily, I guess.

**Mr Glower:** Strictly in the number of units.

**Mr David Johnson:** Through the member for Bruce's questions and your answers, I wasn't entirely sure. Is there a changing attitude towards the smaller credit unions, the very small ones? Is there a feeling, a concern, a thrust to support amalgamation of these units?

**Mr Glower:** From the regulatory point of view, I don't think there is any one thrust or another. A lot of the decline in the number of units has also been as a result of voluntary dissolutions, where the members themselves decide that. If their credit union today is not their primary financial institution and they want to be serviced by a different financial institution that is not a credit union, they would undergo a voluntary dissolution and usually take the reserves that have been built up with them.

The regulator itself has no particular course of action. In fact, I think the 80-20 rule—and I'm just looking for the numbers here—operates right here, where 80% of the credit unions, in terms of numbers, represent 20% of the assets. So the majority of the credit unions in fact are, if you will, small credit unions.

If I use a cutoff, for example, of \$10 million in assets, it's about a 60-40 split; 60% of the credit unions represent assets under \$10 million per unit. I think the evidence supports the fact that the majority of our units are still small units, and their reserve base is among the strongest in the system.

**Mr David Johnson:** You mention the word "reserve." I didn't expect to be here today at this point yesterday, so forgive me if I'm a little bit behind, but one of the concerns that I've heard—maybe we should be getting into this later but we've sort of started into it here now—is that as a result of this bill there is a changing attitude towards the reserves that will be required on hand, depending on the different risk assessment or something like that. There is concern that this will impact on the smaller credit unions.

I think the claim is that the smaller credit unions know their members, they work in the same business, that sort of thing, and the default level, the claim—I don't know what your statistics show, but the default level with most of the smaller units is much lower. You don't dare default on the guy working across the bench from you

sort of thing, because you've got to come into work and see him day after day, so there's a great deal of pressure to keep up on payments. If there is a change in the reserve structure, it may actually impact more on the small credit unions than on the big ones.

Is that so, number one, and if it is, isn't that sort of a disincentive for the small ones and doesn't it substantiate maybe a feeling that there is a thrust against them?

**Mr Glower:** We've done some homework. I think Mr Cousens may have raised this during the debate. The effect of adopting what is called the risk-weighted capital approach is benefiting the majority of the smaller units. I'll show you how it benefits them in a moment, but obviously the historical performance of the system as a whole—I think I've sort of indicated that the balance is towards smaller units, in any case. That's where the majority of the lending is, in the consumer lending. To the extent that some of those units are a bit larger, they would get into mortgage lending.

The loan loss experience has been positive in the credit union system overall, so we are also assigning what would be a lower risk-weighted amount for credit unions as they might for banks and trust companies. That would be an 80% risk-weighting as opposed to 100% risk-weighting, because of that stronger approach, the knowledge of the members and what not.

In any case, the benefit to the smaller units is as follows: For units under \$1 million in assets, we have found that there are nine units which do not comply with the current requirements and in fact they will comply with the risk-weighted system approach. The four units that currently comply will in fact not comply under a risk-weighted system. So for units under \$1 million, there is a benefit of five: five more units will in fact comply.

For units under \$5 million in assets, 18 credit unions and/or caisses populaires which do not currently meet requirements in fact will comply and eight units that currently are in compliance will be below the risk-weighted system measurement, so a net benefit there of 10. All other units within these two groups, and I don't know the number off the top of my head, will continue to comply with the new requirements.

So those that we are currently monitoring for a specific reason of not complying—in fact there is a net benefit and everybody else who is complying today will continue to comply under the new methodology. So there isn't that benefit, and it's not detrimental.

**The Chair:** I just want to interject at this point and that I have no problem with the way things are going. However, the committee did have an understanding that we would have our technical overview of the bill this morning, and we were going to take basically about an hour for the technical presentation and about an hour for questions and answers.

It's just more difficult as we do it piecemeal than it is to go forward with the whole presentation of the technical overview and then use the rest of the time for questions and answers.

So if I could have the indulgence of the committee, I think we should continue with the technical overview by



the staff from the Finance ministry and then we will have some time left for Qs and As.

**Mr Owens:** If I could just ask the members of the opposition a quick question with respect to their amendments. Do you have any idea when your amendments will be available to the committee?

**Mr Elston:** If I may, we were kind of waiting to see the amendments which are being proposed. For instance, we were being told that the mutuals amendments would be considered. I've held off in doing anything; obviously, you're going to bring them forward. So I can't bring forward amendments when I know you're going to have a package. You told me yesterday there would be maybe 27 items. It seems rather reckless of me to go around and then try and guess which ones you're going to bring in.

**Mr Owens:** Some 127.

**Mr Elston:** Sorry, 127. I now stand fully corrected.

**Mr Owens:** Thank you for shortening my—

**Mr Elston:** That now will bring in nine more units into compliance and it will lose 18 more. I don't have them ready. My considerations of amendments would be on the basis of some of the presentations and just how much there is concern around the direction that we'll be going, but obviously, the mutuals is one area I was going to be very interested in. So I'm not prepared to do it, but as soon as I can, I will share those with everybody here, obviously.

**Mr Owens:** My understanding from the ministry perspective—and maybe folks from the ministry can clarify for our purposes—our amendments should be ready by Tuesday, Wednesday of next week.

**Mr Imants Abols:** They will be ready by the end of the week. That means I'll have them in my hand this Friday, but I'd like to review them before they're sent out. Definitely by the beginning—

**Mr Owens:** So they will be ready early next week.

**Mr Abols:** That's right.

**The Chair:** Do you know who is talking now?

**Mr Owens:** Imants, please introduce yourself.

**Mr Abols:** My name is Imants Abols. I'm legal counsel with the office of legal services for the Ministry of Finance.

I just want to add one gloss, if I may, to the last comment about the concern about the shift from—if I may, Mr Chairman—emphasis on reserves to emphasis on equity capital. I think it's important to understand where the pressure for that comes from. It exists today in the absence of this new regime and it will continue to exist despite this new regime because the reserves are built up, as committee members can appreciate, from the profit margins that credit unions can generate in selling their product, and because they're faced with the same competitive pressures that all financial institutions are faced with today, those profit margins are shrinking.

The advantage that other financial institutions have is that they have other ways of accessing other forms of capital and thereby maintaining and growing that cushion that all businesses need to survive difficult times and to prosper in good times.

Giving the ability to credit unions to access capital markets is really a plus for all units, whether large or small. In the case of small units, it's true that there may be certain economies of scale that they can't manage, that they can't go out on their own and access this capital, but the act does provide an ability for leagues, on behalf of their members, to issue a security and create a pool of capital that would be shared by all members of that league.

So it isn't a pressure that's being generated by this act; it's a pressure that exists there and is being generated by the marketplace, and our view is that this new regime will help them deal with those pressures.

1110

**The Chair:** Thank you very much. At this time, if you have a planned presentation, I would suggest that we proceed with that. I would ask the presenters if they would please identify themselves for the purposes of the committee members and for Hansard prior to making comments; not every time, just the initial time.

**Mr Sutherland:** A clarification, Chair: The committee is sitting this afternoon?

**The Chair:** Not as I understand it, Mr Sutherland.

**Mr Sutherland:** Okay.

**The Chair:** We had an understanding among the committee members that, because of today, there was a need for some members to get back to their ridings this afternoon in a timely fashion, as I understand it.

**Mr Sutherland:** I guess my only comment is, we're having the presentation, then you're saying an hour for questions afterwards.

**The Chair:** That wasn't something that was pre-arranged.

**Mr Sutherland:** Yes. It's just that we're not going to sit next week, so the hour for questions is going to be two weeks from today. Is that what we're—

**The Chair:** No, no. I believe some of that presentation has already been made; maybe I'm wrong. But I think we should undertake to get under way and see how much time's left.

**Mr Sutherland:** Okay. The committee is adjourning at 12, though; correct?

**The Chair:** The committee certainly has all the decision-making power. If they should, for some reason, decide that they want to sit this afternoon, we'd have to see about arranging that.

**Mr Sutherland:** I guess if we're going to do that, we should, before they start the presentation, make that decision as to whether the committee will be sitting this afternoon.

**The Chair:** First I'll ask the clerk if that presents any technical problems. No? No, there are no problems with that. Is everyone in agreement with sitting this afternoon?

**Mr David Johnson:** How long are you going to be?

**Mr Abols:** An hour.

**Mr Jim Wiseman (Durham West):** I've got three hours of questions.

**The Chair:** So it looks like there's an agreement,



then, at this time that we will come back following routine proceedings this afternoon.

*Interjections.*

**The Chair:** I suggest we start and we have an agreement to come back this afternoon. Does that cause a problem for the staff of the Finance ministry? No? Then I suggest that at this point in time we start.

**Ms Beth Atcheson:** My name is Beth Atcheson. I'm the director of the financial services policy branch in the Ministry of Finance. What we propose to do is introduce the presenters. We will then go through the three areas in the bill and then move to questions, if there's any time left in this portion, and we would be pleased to come back this afternoon.

On my immediate right is Joan Smart, vice-chair of the Ontario Securities Commission, who will deal with the securities portion first; Lawrie Savage, the superintendent of insurance, who will deal with the life agent reform portion of the bill; and Harvey and Imants have already introduced themselves.

**Ms Joan Smart:** The amendments to the Securities Act are generally intended to provide some updating to the act and also to address some developments in the capital markets and the law, such as the charter. The amendments are really in three main areas: first of all, amendments to the investigatory and remedial powers of the commission and the courts; secondly, amendments with respect to recognition of SROs, self-regulatory organizations; and thirdly, there are several amendments to the Toronto Stock Exchange Act and the Toronto Futures Exchange Act dealing with their disciplinary powers.

What I propose to do is walk you through the bill pointing out the sections where some of the significant changes have been made.

First of all, in the definitions section, the definition of an associate has been changed, so relatives and spouses will only be associates if they're living in the same house. The significance of this is in the insider trading provisions where there's some limitation now placed on those provisions.

Secondly, the definition of the director has been changed to recognize the executive director, who for some time has been the COO of the commission.

There has been added a definition of market participant and a definition of Ontario securities law. These definitions are significant when you come to the sections dealing with compliance reviews and remedial powers of the commission.

Part IV of the act, dealing with the executive director and secretary, is largely a housekeeping provision which addresses the fact that the executive director is now formally recognized.

Part VI, which is "Investigations and Examinations," is somewhat more significant. First of all, investigation orders: The proposed amendments to section 11 clarify the scope of the investigation powers of the commission. Under that section, the commission can order an investigation with respect to any matter it considers expedient for the due administration of the securities law or the

regulation of the capital markets in Ontario or in another jurisdiction. The latter authority is important given that securities transactions tend to be interprovincial and international in a lot of cases, and this is consistent with the increasing effort to cooperate and coordinate securities regulations.

**Mr David Johnson:** Are you going through the bill when you're talking about this?

**Ms Smart:** Yes.

**Mr David Johnson:** Could you give us the page number you're on when you do that, just as you continue, if it's possible? It would be easier to follow.

**Ms Smart:** I, unfortunately, have my copy out of the OSC book, which doesn't have the same page numbers.

I'm at page 155.

Then over on page 156, I'm now at "Financial Examination Orders." Currently, the commission can examine the financial affairs of a recognized clearing agency, registrant or reporting issuer and the books and records of custodians. The proposed amendments clarify and broaden the current audit power to permit the commission to order a financial examination of any market participant.

In section 13, which deals with the powers of an investigator or examiner, which is on page 157, currently an investigator can seize and take possession of documents, and he can do that without a court order. The amendments will require that a judge of the Ontario Court grant an order, but the search-and-seizure powers are broadened somewhat.

Moving over to page 159, sections 17 and 18, which deal with the use of compelled testimony, under those sections the commission can order that compelled testimony be disclosed, but it can only be disclosed on prior notice to certain people set out in that section. Secondly, limitations are placed on the use that can be made of compelled testimony. For example, it can't be disclosed to a police agency without the consent of the person who gave the testimony and it can't be used in certain provincial court prosecutions.

Part VII, which is on page 160, which deals with recordkeeping and compliance reviews: The amendment will extend to all market participants the present duty of registrants and certain others to keep books, records and other documents necessary for the proper reporting of their business transactions and financial affairs. The commission will also have the power under this section to go out and conduct reviews to determine whether Ontario's securities laws are being complied with.

Part VIII on page 161 dealing with self-regulation: Currently, the OSC has the power to recognize stock exchanges and clearing agencies, and in some limited respects can recognize the Investment Dealers Association. Up until now, our supervision of the Investment Dealers Association has been done largely by an agreement that we've had on an informal basis with it. This section of the act will give the commission the full authority to recognize and supervise self-regulatory organizations. Currently in Ontario, there are really only two operating: one is the Toronto Stock Exchange and



the other is the Investment Dealers Association.

The amendments in that section will also permit the commission to delegate to the SRO certain of the registration responsibilities. We intend, by doing that, to gain some efficiencies in regulatory structure. Of course, that will be subject to supervision by the commission.

1120

Turning to section 122, which is at page 169, the offences section, currently where a company is found guilty of an offence under the act, a director or officer who permitted, authorized or acquiesced in the commission of the offence may also be found guilty. This section is being amended to eliminate the requirement that a principal actor be found guilty. So now a director or officer can be found guilty even though the company itself isn't charged. That's to deal with situations such as the situation where a company is no longer in existence at the time the charge is laid.

There's also been a definition added on page 170, of "loss avoided." The significance of that is that there can now be a fine for insider trading, which will be calculated on either the profit made or the loss avoided.

Turning to the commission remedies, page 171, section 126, dealing with interim preservation of property, the commission currently has the power to make an order freezing assets. Under the amendments, the commission will be able to freeze assets when it considers it expedient for the due administration of the securities law or the regulation of the capital markets or to assist in the administration of the securities laws of another jurisdiction or regulation of their capital markets. However, such an order has to be reviewed by a judge of the Ontario Court as soon as practicable and, in any case, no longer than seven days after the issuance of the order.

At page 172, section 127, currently the remedies that are available to the commission where there has been misconduct in the marketplace tend to be fairly substantial, such as orders to take away someone's registration or orders removing their exemptions, which has the effect of basically taking them out of the capital markets. There have been several new remedies added here which are intended to be more appropriate in certain circumstances.

First of all, when the commission is satisfied that a market participant hasn't complied with the securities law, it will have the power to make orders requiring that the market participant provide or not provide or amend a report or any other document.

Secondly, when the commission is of the opinion that it's in the public interest, it can make an order that a market participant submit to a review of its practices and procedures and institute changes or that a person or company be reprimanded.

At section 128 on page 174, the amendments significantly expand the range of remedies that are available to the Ontario Court (General Division) on an application by the commission. Currently, the courts do have the authority to make orders directing compliance with a decision of the commission or with the legislation. A number of new remedies are added here. Where there's been a breach of Ontario securities law, for example, the

court will be able to make an order prohibiting someone from being a director or officer of a public company or ordering disgorgement.

**Mr Elston:** Excuse me a second. When I was listening to Ms Smart providing us with the information, are there any of these items which are going to be subject to amendments to the amendments that you've just gone through? For a second you were talking about "the amendment will." What you meant was the section in here that is amending your current act will allow you to do anything.

**Ms Smart:** Yes.

**Mr Elston:** Are you going to tell us if there are going to be amendments proposed in your section of the act where we do this technical briefing? The problem for me is that I find this quite helpful, but if there are going to be some other changes that are floating through the securities part, maybe at the beginning of the next presentations by the others, they could say, "There are going to be some sections that we're proposing amendments to," and enumerate those so we can put a little asterisk beside them.

*Interjection.*

**Mr Elston:** Oh, I see there may be some technical difficulty. If some sections are going to be added obviously for the Ontario mutuals, that's not going to be a difficulty. We're not going to ask you to enumerate every section to be amended. But when Joan's going through this, which I find quite helpful, if there is some word tightening to be done or if there are some other things that are going to help, maybe you could just highlight those for us. Or maybe at the end of your presentation you could say, "There will be a proposal for three or four more changes," or whatever.

I notice in Steve's presentation, he said that some of the presentations by some intervenors, the Canadian Bankers Association and others, in the discussions have helped in narrowing a band of concerns. In fact, I see that some of those presenters or some of those people who were put on the list to be presenters have not now asked to be on, presumably because there are going to be some changes.

I don't want to make the task any more onerous, it's just that if some of these sections are going to be changed, then obviously the questions we have may evaporate. That's all.

**Ms Smart:** As far as I'm aware at this point, there will be some amendments to the securities section. I don't think any of them are very significant. In fact, most of them are things like "comma by" and changing the wording, but not significantly changing the meaning.

**Mr Elston:** I know that when you get down to the final words, the comma and the one-word change sometimes drive the corporate and securities people up the wall. In any event, that's helpful. Just as long as we know that generally speaking the overall is going to stay generally as the presentation is. It helps.

I was just driven by the sense that 127 amendments are going to fall on us next week and we're now going to have to search through to see whether or not the compli-



ance is general or whatever with the technical briefing we're getting today. I'm just trying to make it easy on ourselves. I guess that's what I was asking for.

**Mr Abols:** What I could perhaps suggest is that we already have a table of contents listing all the sections that are going to be amended. The table of contents doesn't tell you how it's going to be amended. You have to see the motion itself.

**Mr Elston:** But that will be helpful.

**Mr Abols:** I could bring that in this afternoon and circulate it to the members.

**Mr Elston:** Great.

**Mr Abols:** It's not up to date. There are still a few more amendments coming, but it lists virtually most of them.

**Ms Smart:** The next section I'd refer you to is 129.1 at page 177, which deals with the limitation period. The existing limitation period in the act requires that a provincial court prosecution be commenced within one year of the date on which the facts on which the prosecution is based first came to the knowledge of the commission, and a commission hearing must be commenced within two years of that date.

The amendment will change both the length of the limitation period and the test when it begins to run. Although the length will be extended to five years for both court and commission proceedings, the date on which the period begins to run will be the date of the occurrence of the last event on which the proceeding is based. This will be a more objective test.

The next section I'll be referring to is 152 at page 180, which is an application for letters of request. The proposed amendments to the Securities Act will authorize the commission to apply to the Ontario Court for an order appointing a person to take evidence of a witness outside of Ontario for use in a proceeding before the commission, and providing for the issuance of a letter of request to those judicial authorities requesting their assistance.

The amendments will also provide for reciprocal assistance by our courts. Again, this is important given the interprovincial and international nature of securities transactions.

Turning to the amendments to the Toronto Stock Exchange Act and the Toronto Futures Exchange Act at page 183, the Toronto Stock Exchange and the Toronto Futures Exchange currently have no jurisdiction under their statutes to initiate proceedings against former members and against officers, directors and employees of current or former members of the exchange who are no longer in the business. As a result, a member, director, officer or employee can avoid disciplinary proceedings just by resigning. The amendments to the TSE and TFE acts will extend the disciplinary jurisdiction to cover that kind of situation.

1130

**Ms Atcheson:** If questions on this portion of the bill are limited, we could take them now, or everyone could come back this afternoon if there's a preference.

**The Chair:** I'm certainly in the hands of the commit-

tee. If there's a sense that we should just complete the technical overview, then we should probably do that.

**Mr David Johnson:** I don't have any questions.

**Mr Elston:** I do have a couple, actually. I'm not sure just how close they are to technical in the sense of particularly the new powers, the delegation. I understand that the Investment Dealers Association of Canada, for instance, is an organization that generally does cross-country regulation in some large measure, and I guess I'm looking for assurance that this series of amendments is compatible with its role in other jurisdictions, in fact that there is a harmonization at least of its role from one province to another. I know we have reciprocal agreements, which you just mentioned in the last few comments, but do these basically allow for harmonization of our rules and applications across the provinces?

**Ms Smart:** They do to some extent. The IDA is formally recognized as an SRO in some of the other jurisdictions. British Columbia would be an example. In some of the provinces the IDA has been delegated registration responsibilities, again like British Columbia. I expect there will be more of that.

**Mr Elston:** Is there a sense that when they're doing their delegated jobs in each of these provinces the jobs are generally going to be the same? Are they generally the same in Ontario as they are in BC, for instance, that it's as important, in doing their job, that the jobs they have to do in each of the provinces are similar, in other words, if they can be consistent, I guess, with their client groups in each of the provinces, as it is to say that it's the same organization doing the regulation, if that is clear? It may not be. In other words, Murray Elston can be a regulator in Ontario and he can be a regulator in BC and in Alberta, but if I do a different job of regulation in each of those centres I'm really not doing the same job, although I'm a regulator in each of the provinces. I was basically saying, do they do the same thing in Ontario under their authority as they do in BC, as they do in Alberta, as they do in whatever other jurisdiction?

**Ms Smart:** I don't think I could go so far as to say that currently or even under these amendments they will do exactly the same thing in each jurisdiction.

**Mr Elston:** Does it permit evolution towards harmonization? Do these amendments permit them to evolve to doing the same job?

**Ms Smart:** Yes.

**Mr Elston:** Harmonization is still the big concern in terms of financial markets from one side of the country right to the other.

**Ms Smart:** Yes.

**Mr Elston:** So these would permit that to occur.

**Ms Smart:** Yes. The IDA, as you may know, also has an initiative under way where it hopes to take over from some of the exchanges some of the self-regulatory function in terms of member regulation, and the IDA is very anxious to get recognition in Ontario as a first step towards that process which will allow it to do more across the country.

**Mr Elston:** As long as it's permissive, I think it's probably, from my point of view, at least the beginning



of the evolution and it will allow them to move in a direction that's flexible enough.

**Ms Smart:** Yes.

**Mr Elston:** The second question: I'm not just too sure how far we can take this part of it, but since there are going to be securities issued by credit unions, the role, for me, of the IDA or others in viewing the documents supporting the issuance of new securities, has that been worked out between your organization and the credit unions' organizations to know who is going to be responsible for the public review?

I know what Mr Owens said in his remarks, which was that offerings to the general public will be subject to Securities Act materials. But that, from my point of view, doesn't really answer my question, because I'll tell you, I could easily ask anybody who's interested to buy a \$1 share in any credit union and then I'm not part of the general public.

I want to know what sort of guidelines or issues are to be raised or have been raised between the securities side of the regulator and credit unions to ensure that, as a matter of convenience, I can get around having to issue a prospectus to somebody who is not now a member by merely asking a prospective investor to buy a \$1 share in my credit union.

**Ms Smart:** I think that question should be answered first with respect to what is in the bill relating to credit unions and then we can come back to the securities side of it, if there's more.

**Mr Elston:** The reason I wanted to ask the question was because basically you could avoid having to issue a prospectus, and the prospectus is needed because a general issuing to the public has to go through a whole series of tests as to the public's right to know about the issuer. From my point of view, it's just necessary. As long as the question is taken as notice, then we can come back and make sure that there have been very secure arrangements made among the organizations in the Ministry of Finance to ensure that there isn't a way of getting around the requirements publicly.

**Ms Smart:** The bill requires—I may not get the terminology exactly right—for those offerings to members only, as opposed to members of the general public—

**Mr Elston:** Oh, I know what the difference is.

**Ms Smart:** —an offering statement which has regulatory review—just let me finish—and the securities commission has actually been represented on the work team. What we expect is that there will be a great deal of similarity between the review of the offering statement and the review of a prospectus.

**Mr Elston:** Are they going to be the same?

**Ms Smart:** I think probably the fair answer to that is that they're unlikely to be exactly the same, because the groups are different and the circumstances of issue are different, but around the fundamentals of disclosure and protection of the people buying, I think they will be the same in result.

**Mr Elston:** I guess that begs the question, why is somebody who is a member not entitled to the same protection in terms of disclosure of detail as a member of

the general public? My point is that there should be no difference in class, because everybody, even a member inside, should have the absolutely fullest disclosure of the condition or circumstance of the offering party, but what this regimen has set up is currently a differentiation between a member and the broader public in terms of right to know.

Basically, why wouldn't you just have one document, is what I'm saying, and then you don't have any problem with having to test whether it's going to be general public or not general public. Then you won't have to deal with the mischief of saying, "If you just buy a share, you can invest in us by viewing this document. If you won't buy a share, then we've got to prepare this much more and it's going to be expensive," and all that. So why don't you just have one document?

**Mr Abols:** First of all, you're presuming a number of things when you question the utility of having these two different regimes. I think Ms Atcheson has addressed the part about, is it going to be that significantly different in terms of consumer protection or investor protection? On the fundamentals, I think the answer is definitely no, it's the same standard of disclosure: full, true and plain disclosure.

But you also have to recognize that of course within a certain context that means something different. I think it's unfair to minimize the importance of becoming a member, because as you know, no doubt, even under the traditional securities regime, there's a differentiation made—and Ms Smart could perhaps speak to this—depending on who is the potential investor, whether it's a private placement investment and so on. If you use that analogy and look at the credit union side, becoming a member means something. It doesn't just mean paying a dollar; it means you have access to certain information, you have a right to certain information about the credit union in terms of annual financial statements, access to inspecting some of the records of the credit union.

On that side, membership does mean something more than simply paying your money and then calling yourself a member. It does entitle you to certain rights. It does entitle you to achieve a certain level of knowledge through access to information, participating in annual meetings and so on.

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I would add, just on a more technical note—and we'll perhaps get at it in a more fulsome way when we look at the provisions—in deciding whether to receipt or approve an offering statement, the director is left with a significant degree of residual discretion: He can refuse to receipt the offering statement if it's not in the public interest to do so.

Those are sort of magic words, very broad words, but they can sort of address the problems you suggest where it becomes patently obvious that what a credit union is doing is simply trying to avoid the rigours of the Securities Act, but in effect really making a general offering to the general public.

If there are concerns of that nature, I suggest there are legal mechanisms whereby, by default, in those instances,



a credit union could be forced to return to the securities regime.

**Mr Elston:** Could I ask, Joan, do you know offhand, if you can help us, what the difference in cost would be? The issue, of course, would be you have to file a prospectus with the securities commission. It has to be available and obviously there'd be a fairly big expense in all of this.

If you knew what the cost issue was—I just have this strange feeling that once you set up a series, and I understand there are a couple of dualities in existing securities markets, then they're going to be used. I guess if you convince people that there's going to be no difference in substance to a document which they issue inside, ie, you prepare one document and it could be acceptable, for instance, for public offering, then you're not going to get into the big issue. It's going to be full, true and whatever—

**Ms Smart:** Plain.

**Mr Elston:** Of course, they're never plain; I've read some. You have to be fairly bright to even go through and you have to have some understanding of what happens. In all of those circumstances, why wouldn't you just say, "One document," and the one document should be acceptable for public filing if people had to go outside the membership for raising capital funds?

**Ms Smart:** I think you've put your finger on something that we did investigate, which is the cost of going through the prospectus route. To the best of my knowledge, it's only been done by credit unions in British Columbia, but the cost is significantly higher than the offering statement route.

**Mr Elston:** The top four credit unions, so to speak, in Canada are all from BC, if I understand, if you look at asset size. In any event, as long as you can assure me that the director is going to have considerable assistance from the securities commission in reviewing these things and making sure the tests are met and that people are going to be able to avoid, as a matter of convenience, the full disclosure, then that's okay. The mischief is there in the wording, currently. The issue is whether we as legislators want to deal with the mischief that is possible or whether we just leave it as a mischief that is possible.

**Mr Abols:** Let me just address that. Again, there's a presumption there is a mischief to address here or there's a concern about potential mischief. The facts, I think, speak for themselves, though. We have an offering statement regime already in place under the Co-operative Corporations Act and you have similar regimes in other provinces. I'm not aware of any evidence that suggests, under that regime which we use as a model for the credit union's offering to its members, there have been problems, that people have been defrauded or complained about not knowing what they have purchased. The facts really speak for themselves. The offering statement regime has demonstrated that it does work and does work effectively.

**Mr Elston:** All I want is the undertaking, or at least the understanding, of the people who are advising us that there is no mischief to occur under the amendments. If

you're going to say first that all the credit unions are in good shape, I find that okay, and if they're all going to be able to give full disclosure under these and there won't be a problem, then I'm happy with it.

**Ms Smart:** One thing I should clarify: I think you asked if we had worked out with the IDA the review of these documents. The IDA will not be delegated under these amendments authority to review disclosure documents. That is not part of the amendments. That is something that is done at the commission, not by the IDA. The IDA's role tends to be more regulating its members in terms of capital and business—

**Mr Elston:** Actually, I guess I should have been more clear on that. The IDA's question when I met with them at one point was, does somebody who does offer these through their credit unions become a member? Are they issuing securities for the purposes of regulation? What is the status of a credit union that offers share capital even to their members? What is their status if they once filed?

They are, as I understand it—the idea is that the credit union is going to sell its own materials, basically sort of sell them over-the-counter type stuff. Over-the-counter sales, it seems to me, are of interest to us. Who does regulate the person who actually sells those securities? I think I'm about to get another answer from another part of the organization.

**Mr Abols:** You're asking the credit union questions. That's why I guess you're getting the answer from us.

**Mr Elston:** Except that it's a securities-oriented issue. Here's the problem. As I raised it in my second reading debate, and I don't mean to extend this too long, but the issue is, who is going to look after the regulation of the offering party?

I don't want somebody at the end of the day saying, "Well, it really was theirs because this is a securities issues," or, "No, it was theirs because it was a credit unions issue." I just want to be sure that the regulatory nature of the member offerings or the general public offerings are well understood before we get ourselves into it; otherwise, we'd better make sure that we become clear as to when who is involved. That's the nature of my questions.

**Ms Atcheson:** The bill was intended to be clear on this point, which is that when the offering is to members, the responsible regulatory entity is the director; when the offering is to the general public, it is under the Securities Act. We will clarify the issue of the status of issuers, but I suspect what we'll find is that they are not dealers. The fact that a financial institution issues shares does not make it a dealer, and we will give you the correct reference for that.

**Mr Abols:** Yes, that's correct. There are specific exemptions to the Securities Act that are ancillary to changes in the credit unions act which grant exemptions to certain parties. I will just add, though, maybe as another level of comfort, that once a credit union is in the securities regime, as I understand the workings of the Securities Act, it remains in that securities regime. Once it is issued securities under the securities regime, it becomes a reporting issuer for all time.



**Mr Elston:** So once in, always in. So if there was a reason to try and avoid getting in in the first place, that would be it.

**Mr Abols:** What it suggests, though, is that a credit union, when it does decide to make a public offering and enter the securities regime under the Securities Act, has to really weigh the consequences of that. Because then it can still make offerings under our offering statement regime, but for all intents and purposes, it will probably have to also comply with the commission's requirements as a reporting issuer, which means filing updates on changes.

**Mr Elston:** Going back to an earlier question, wouldn't that make it really sort of more intense pressure for somebody to say: "Gee, Murray, you have some money to invest in us. Why wouldn't you just buy a share, keep us away from all this other expensive rigmarole. Become a member, and then you can buy the shares"?

**Ms Atcheson:** Could we just answer that in a practical way?

**Mr Elston:** I thought that was the practical way, actually.

**Ms Atcheson:** Well, the core regime is really the offering to members by way of an offering statement. Our expectation is that the number of credit unions that will actually go to market under the Securities Act is extremely small and probably this is going to happen very, very slowly over time, so that the core regime is actually consistent with what the core regime has been, which is the offering statement to members.

In other words, we don't see it the other way around, that everybody's going to move under the Securities Act in order to avoid going the offering statement route. We see that what the act does is really in many ways maintain the system of today while allowing those credit unions, the small number of exceptional credit unions that are in a position to go to the public to go to the public, but with the full protection.

I might also say that under the Securities Act, apart from the cost of going under the Securities Act regime, they will have to look very closely at their operation because of the relationship between members and non-members. We expect that the number who will take up that option is extremely small and will develop over time, so that the core regime is really consistent with what the core regime has been.

**Mr Elston:** I support the idea of their being able to go ahead and do it. I just want to be sure that the regulators have it clearly in their minds who is going to be responsible. I also want it to be extremely well understood by the people who are members of the credit unions that, for instance, Murray Elston, who may not have any other dealing with a credit union, could become a member of their credit union for the purposes of assisting with their capital appreciation.

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That's possible, right? Murray Elston could go into the credit union in Durham—I don't know if the folks in Durham are going to start issuing share capital—and buy

a share and then pay down \$250,000 and buy non-voting, but participating, shares to help them build up their capital levels. There is really no test to figure out whether Murray Elston is really a member or not a member, because once I buy that share I am a member, fully participating in the organization.

I am as a result a member not of the general public, but of the limited public to whom this one document, which I can take a peek at, is okay. I could have actually got this from a friend of mine who's over there, saying: "Listen, Murray, we want to issue some capital. We know you have a few dollars left over. The social contract didn't take all your money away from you. As a result, we think that you should buy a few shares."

I'm saying, "What have you got?" They say: "Here's the document. Here it's approved by the director of credit unions. This is really all you need to know. Come on over and join up. You've got to buy from us. You've got to come into our office. Buy a share and then you can buy under this type of disclosure."

"I don't really want to join your credit union. I hardly ever go to Durham. I don't mind getting a dividend from you on my shares." "Listen, if you don't come in and join up, then we've got to go through a whole rigmarole and it's too expensive."

That is there. If I were wanting to avoid an extremely costly adventure, it would be to avoid doing a public offering, but I would do private recruiting of more members, basically. That's what's sitting in the back of my mind. Obviously, you can tell I'm a little preoccupied by it, but it doesn't seem to me that—

Beth, you can talk about how this regime is set up. It is exactly set up like that, but the practical nature of the way the sales are made, if somebody decides to go this way, will be person to person, "Join and buy some shares," as opposed to having a giant public offering.

I would avoid it if I could. I would avoid going into the Securities Act; it makes really good sense not to be involved there. But it doesn't take much. A dollar will buy me a membership and then I can avoid all the expense. If I was an investor out there, I'd say: "That's good common sense. Why would you pay more if I can buy in otherwise?"

**Ms Atcheson:** The disclosure will be there, and I think Imants has spoken to the standard of disclosure. Even under the full Securities Act regime, the fact that there's a specific standard of disclosure doesn't mean that people will make—people still make good and bad investments. I think the key is that we've built the standard of disclosure into the system.

**Mr Elston:** So why don't we have the same disclosure document for each? That takes me right back to the initial question, why isn't it one document? There doesn't seem to be a rationale not to. If it's going to be basically the same, why don't you make it the same? Then everybody knows what the test is. The securities commission knows what the test is. The director knows that basically he will be reviewing the test for complete disclosure on the same basis as if this were a public offering.

That's my question. I don't care how they do it, I can



understand them avoiding the Securities Act. But why don't you just have one test and then two regulators can be ad idem totally with respect to what the document provides?

**Ms Atcheson:** It is in fact one test. The difference is under which act you fall.

**Mr Elston:** Why isn't it the same for both, though?

**Ms Atcheson:** It is slightly more complicated than that in the sense that the test is the same, the document will be essentially the same, but there's a difference if you fall under the Securities Act. If you fall under the Securities Act, a whole number of other rules come into play that we didn't think were necessarily appropriate in every case where credit unions wanted to offer to their members. It's really as simple as that. We can go back and give some examples.

**Mr Elston:** But that obviously presumes that every member is fully aware of everything happening inside his or her credit union. That isn't always necessarily the case, right? Isn't that the presumption that is made here?

**Mr Glower:** It's their obligation.

**Mr Elston:** It's their obligation, I understand, Harvey.

**Mr Abols:** It's no different than the presumption that when a person gets a prospectus he reads it and then he's fully informed about the investment. We can't guard against people not exercising their own common sense and good judgement and adopting some prudence in making investments.

**Mr Elston:** So is there something really wrong with having one document that could become both a prospectus and an inside offering document? I don't understand what the problem is. If they're going to do the same thing, why don't you just have one document, and then you have one format and you go through the whole list of things that people should know in one place at one time as opposed to saying, "Here's our general offering, but you should know from the general meeting that the following issues were discussed."

**Ms Atcheson:** I think that's entirely possible in the sense that the offering statement at the end of the day could be very much like the prospectus. I just want to be careful that it's not, though, the same as saying that it's the whole securities regime reflected in that document, because there are very specific rules in the Securities Act that are not being applied to offerings by credit unions. The standard of disclosure is the same, but—

**Mr Elston:** But the items to be disclosed are not?

**Ms Atcheson:** Yes. I'm now talking about things like rescission rights around membership. What we've done is taken the standard of disclosure and the disclosure issues but not brought in the whole of the complex securities regime, which we did not think was appropriate in the case of offering to members.

I agree that you're focusing on the document and I think our answer back is that the document, vis-à-vis the standard of disclosure, vis-à-vis the types of disclosure, will be very similar. But what we will not be doing, because it's not just a question of the document, is importing all of the Securities Act rules into offerings to members. That's why the distinction was there. It was

thought that in public policy terms it made good sense for credit unions to be able to do things with the same standard of disclosure but without the whole securities regime being applied when they're dealing with members.

We can give some examples of this. They tend to be very technical rules around the treatment of members and non-members, because what the Securities Act regime does really is focus more on the treatment of non-members and preferences around those issues, and it didn't make sense to import all of those.

I think the answer is, the document will be very much the same, but I don't want there to be misunderstanding that that means the whole Securities Act regime thereby will be coming in under the Credit Unions and Caisses Populaires Act, because that won't be the result.

**The Chair:** Mr Elston, are you nearly satisfied with—

**Mr Elston:** No, I'm not satisfied, but I think we've taken the discussion as far as we can.

**The Chair:** Prior to lunch, we have.

**Mr Sutherland:** We've taken it more than that.

**Mr Elston:** No, I don't think we have taken it more than that, because the issue at the end of the day is, how much protection does a person buying a security in any ongoing financial organization have to be told about the financial status?

**The Chair:** And you posed those questions and answers were forthcoming from the ministry, and to the extent that they were—

**Mr Elston:** No, I'm finished with that, except I guess just to say there won't be any amendments proposed for the securities side of it, that we'll deal with the issues of regulating the issuance of securities by credit unions to clarify the issues I've raised?

**Ms Atcheson:** No, because when a credit union offers under the Securities Act, it will be subject to the full Securities Act regime, and it's not proposed to change that.

**The Chair:** Given the fact that we've come to the end of a substantial part of some discussion here and we only have about 30 seconds to go before noon, I'm going to recess this committee until approximately 3:30 this afternoon, following routine proceedings.

*The committee recessed from 1159 to 1546.*

**The Chair:** This afternoon we are continuing with our briefing by the Ministry of Finance.

**Mr Elston:** I had the pleasure of speaking briefly, after the proceedings this morning, with some of the ministry officials around some of the questions, and I think there are some materials which might be helpful at a particular time. I'm not sure whether the ministry officials are ready to provide any of that material, but certainly there are things that are happening to the regulations which I know are not yet drafted.

There are some examples of some things that already have been done in some of the other areas around the issuance of shares. Also, a fairly strong statement has been made to me with respect to it being a tough procedure in relation to getting approvals for the issuance of shares either way, whether it's through the Securities Act,



which is more formalized, or whether through the internal membership sales.

I just wondered if there is anything available. We talked a little bit about it earlier. Perhaps we could have a bit of an update on some of those items for the committee. I think we're generally on the same wavelength, and it's a matter of perhaps getting some of the materials made somewhat more public, at least on the record. Ms Atcheson and others have gone a long way to satisfying me with some of their intentions, in any event, around making sure there aren't problems associated with issuance of shares.

**The Chair:** Is there at this time any written documentation that could be shared with the committee with regard to the concerns Mr Elston raised this morning, or is that something we should anticipate later?

**Ms Atcheson:** I'd make two suggestions. The first is that we give you some indication of the types of things we anticipate having in the Ontario regulation. I would not be comfortable recommending that at this time we share that draft reg, because it simply isn't in the shape—

**Mr Elston:** Actually, it wasn't a draft reg. I think Harvey said he had examples of what was being done with the cooperative shares.

**Ms Atcheson:** That's right. The second thing I was going to suggest is that we actually table some precedents, that we table the Ontario co-op rules around offering statements, that we also table the Quebec precedents so that you can see how another jurisdiction does it. What we might do now, if it would be helpful—or we can actually probably go so far as to put this in writing.

**Mr Elston:** Put it in writing.

**Ms Atcheson:** Okay. Then we'll do a little document on this with the precedents attached.

**The Chair:** Thank you very much. Pursuant to that, we would like to proceed with your briefing as you had planned it or as you see fit.

**Ms Atcheson:** We are assuming that that brings the closure for this portion, the securities part, and we will move on to "Life Agent Reform." Lawrie Savage will take it away.

**Mr Lawrie Savage:** First of all, I'd just mention that with regard to possible amendments to these amendments, we don't expect to have very much at all. There might be a couple of things of a quite technical nature relating to the wording of what's in the bill, but nothing of substance.

Second, just by way of background, I should say that the rules that relate to life insurance agents now are basically all set out in regulations to the act. For that reason, most of the provisions of Bill 134 relating to life agent reform are enabling provisions relating to new regulations or to removing some parts of the act. But essentially, the substance of the life agent reform provisions will be via regulation. Of course, we will be going through a clause-by-clause examination of the bill, but I thought that to give you an overview and an understanding of what the proposals are, it would be better to focus on what the proposals are rather than what's in the bill because, as I say, the bill is really enabling.

I should say also that the current system, just to put these new changes in some context, really spells out in quite a lot of detail, through regulation and by some references in the act, exactly how life insurance products are to be distributed in this province. It has a lot of rules: Agents have to work full-time; they have to be sponsored by one life insurance company; they can't sell the products of any other life insurance company.

What we're doing in these proposals is changing the focus away from this very specific stipulation of how the product is to be sold to a regime where the agents will have much more responsibility to follow certain rules and standards of conduct, where consumers will be in a stronger position with regard to the purchase of life insurance, there'll be more disclosure, there'll be additional protection in terms of fidelity bonding required by the agent, the people who are selling the products will have to be more qualified, and so on, and I'll explain how those things are going to happen.

Really, the idea is that we want to provide more protection for consumers, more convenience for consumers and a wider range of choices. That will also lead to more flexibility and potential innovation for insurance companies and agents in the distribution of these products, which is important, given all the changes taking place in the financial sector right now, particularly in this very competitive area.

With regard to the specific highlights of the proposals, education is a cornerstone of what we're talking about here. Life insurance agents will have to have higher standards of knowledge. We're going to a two-step licensing proposal. In the current situation, an agent applies for a licence, writes an exam, and then they're off and running and they can be an agent from then on. What we're proposing is that the initial exam would be somewhat more difficult, but not unreasonably difficult, and then they would go into a period of two years where they would gain experience. It would be similar to an apprenticeship.

At the end of two years, they would have to write a more difficult examination, which would focus on properly analysing consumer needs, focus on understanding the code of ethics that will apply to the agents, and it will also focus on analysing the advantages and disadvantages of different types of life insurance products. That will be called level 2; after the two-year apprenticeship type of period.

Once an agent reaches level 2, they will be subject to a different regime in terms of the rules that apply, and I'll spell those out a bit more in a few minutes. Continuing education will also be a requirement for the agents, and it's not now; as I say, an agent gets a licence and then they're on their way. But this is an area where the products are very complex and they've been evolving quite rapidly over the last few years, so all the agents will have to participate for a specified number of hours, as a minimum, each year in continuing education.

As I mentioned, agents right now are all required to be sponsored by one life insurance company. Under the new rules, only level 1 agents will be required to have a sponsor. In other words, the new ones who come into the



system start out with a sponsor, but with the increased level of consumer protection and the higher professional standards that will be applicable to these agents once they reach level 2, and also the demonstrated higher level of knowledge they'll have, the level 2 agents won't be required to be sponsored.

I might say, though, that there's nothing to prevent an insurer that wants to sponsor its agents from continuing on with that system. In fact, most of the changes we refer to here are permissive. In other words, it's opening up additional options but it's not requiring any company to utilize those options. They can continue to sell business in the way they've been doing previously if they want to.

**Part-time sales:** Agents are presently required to work full-time in the sale of life insurance. This will be changed so that part-time selling will be allowed. For level 1 agents, if they want to combine part-time selling with some other occupation, that occupation has to be in the financial services business. The reason for that is because we are talking about this two-year period as a kind of apprenticeship. If a person could work part-time but also be driving a taxi or working in a department store or having some other job, he may in fact not be gaining any experience in the sale of financial products. That's why there's a requirement that if, during the first two years, the level 1 agents want to combine part-time work with another occupation, it would have to be in financial services.

Once they get to level 2, however, they could have another job if they wanted to and it wouldn't have to be restricted to financial services. That's because they've demonstrated that they have quite an extensive level of knowledge, they're involved in continuing education and basically have shown that they have what it takes to be a good life insurance agent.

By the way, I guess I should mention that some life companies have said to us, "But we don't want our agents to work part-time." Here again, this is permissive. There's nothing to prevent those life companies from saying to their agents, "We don't want you to work part-time." It's just that we don't think there's a public policy reason for the government of Ontario to prohibit people from working part-time in this business. So that will be an opportunity that opens up. There are people who for one reason or another can't work full-time, and being able to work part-time in the sale of life insurance could be something that could be very attractive to those people and open up additional employment opportunities.

**Multilicensing:** At the present time, agents can hold a life licence plus one other type of licence. What we're proposing is that in the future they could hold the licences that they can be qualified for. If they can qualify and meet all the standards to sell mutual funds and to be a securities dealer and to sell life insurance, we don't think there's any arbitrary reason why they shouldn't be able to do that. In fact, in other professions, those kinds of arbitrary restrictions don't apply. You can be a doctor and a lawyer or an engineer and an accountant and so on as long as you meet the requirements. That's the same idea here.

That will provide additional convenience to the

consumer and it will also provide a more stable business basis for the agents, because one of the problems in this business is that there's very high turnover. About 80% of the agents who come into the system are gone after four years. That's not good for consumers, because it means you don't have people with a lot of experience who are dealing with consumers a lot of the time. If they can sell more products, that will help them to have a more viable occupation and it may reduce the turnover in the industry.

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At the present time, we have quite a long listing of occupations that can't be combined with a life insurance licence. The idea there is that these are occupations where people are in a position to exert undue influence on people to buy life insurance. An example might be a medical doctor. When you're just about to go in for your triple heart valve surgery, the doctor says, "Would you like to buy a life insurance policy?" So some of those things are specifically prohibited, but the list is very long and it includes—

**Mrs Elinor Caplan (Oriole):** What about just before you get on an airplane?

**Mr Savage:** Maybe that should have been on the list.

**Mr Wiseman:** We're just hoping for no self-fulfilling prophecies.

**Mrs Caplan:** Yes, but if the analogy is accurate, in effect we do have exactly that situation.

**Mr Wiseman:** Provided he isn't selling it to you.

**Mr Savage:** Yes, that's right. What we are proposing to do, although we would still keep a few occupations where there clearly is a very significant conflict of interest or opportunity to induce unfairly people to buy, is just to have a provision in the regulations that says no agent shall use undue influence or coercion in the sale of life insurance and also that there cannot be a conflict of interest in the sale of life insurance.

That's the approach that's followed in most other professions. Rather than trying to spell out all the particular occupations where a conflict of interest or coercion could arise, and as has been pointed out, there are many, we will just have a provision that says that any agent who is using undue influence in the sale of life insurance could lose their licence.

**Mr Elston:** Does that include a loans officer at a financial institution?

**Mr Savage:** That's a good point. That will actually be on the list of prohibited occupations. People who are employees of deposit-taking institutions will not be able to hold a licence to sell life insurance.

**Mrs Caplan:** So there's a sense of coercion. That's part of the reason.

**Mr Savage:** Yes, that's right. That's the main part of the reason.

**Mr Wiseman:** Are MPPs still not to be allowed to be licensed to sell insurance?

**Mr Savage:** MPPs were on the list. Are they still on the list? Yes, they're still on the list. Too bad.

**Mrs Caplan:** How about used cars? Are they allowed to sell those?



**The Chair:** Please, Mr Savage, continue. Please try to ignore the interjections, although some of them are amusing.

**Mr Savage:** We're also planning to introduce a code of ethics that all the agents would be governed by. This would set out fundamental principles they should keep in mind when they're out there in the field.

One of the problems we have now is that we may find an agent is engaged in some kind of reprehensible behaviour, but they can look and say, "Where does it say I can't do this?" If we have a code of ethics which says, for example, that every agent shall act in the best interests of the client and the consumer, then if they're not acting in the best interests of the client and consumer, it will be contrary to the code of ethics. Another principle that would likely be in that code of ethics is a know-your-client rule, similar to what applies to securities dealers, so that a life insurance agent will have had to make reasonable investigations about what a person's financial situation is when they are selling a life insurance policy.

I mentioned putting the consumer in a stronger position. We'll also have specific disclosure requirements for agents when they're dealing with consumers. They will have to disclose that they are licensed life insurance salespeople. This is something we get complaints about now. People come in under the guise of calling themselves, say, a financial planner or a financial consultant and sell the person something, and that person may think they've bought some kind of investment and only discover later that it's an insurance policy, and they say, "But I didn't even know this person was a life insurance agent." So they have to disclose that they are licensed life insurance agents.

They will also have to disclose any other licences they hold. If they happen to be a licensed mutual fund agent as well, they have to disclose that. They also have to disclose which life insurance companies they are authorized to represent. The consumer will then be put in a position of knowledge in terms of where this agent is coming from and what their motivation is likely to be.

We'll have a specific provision as well that a life insurance agent can't hold themselves out in a way that's likely to be misleading to the public. The reason this occurs now with the new rules is that previously, when every agent was a career agent, there was no room for confusion. But now we are going to probably have people calling themselves life insurance brokers who will represent a large number of life insurance companies. Once that happens, you don't want people to be able to put up a sign calling themselves life insurance brokers if in fact they are an exclusive agent of one life insurance company. That would be holding yourself out in a way that's misleading to the public.

We're going to place a duty of care on life insurers in terms of recruiting agents and monitoring the behaviour of agents when they're out in the field. The present rules apply only to the agents themselves, so when an agent or a group of agents is involved in some nefarious activities, there's not much we can do to go back to the insurance company that's sponsoring those people. The new rules

will say that every company must maintain reasonable policies and procedures and standards to ensure that the agents are knowledgeable and that they are acting reasonably out in the field. It doesn't mean they have to be looking over their shoulder every minute, but they do have to have reasonable training programs in place and so on to make sure the agents are maintaining reasonable behaviour.

What we're doing there is shifting the emphasis away from the regulator. Right now, some companies say: "You're the regulator. If there are problems with these agents, that's your problem." We want to make sure it's also their problem.

Additional protection for consumers: I think I mentioned that all agents will have to have errors and omissions insurance as well as a fidelity bond, or there may be a requirement to belong to a compensation fund, which some of the other provinces have. If a consumer ends up somehow being defrauded, what can sometimes happen is that they somehow fall between the cracks and none of the companies can be held responsible, and yet the consumer certainly wasn't to blame. We want to have these fallback mechanisms to deal with that.

Probably most of the substance in Bill 134 itself dealing with the life insurance provisions has to do with the life insurance council. The way the bill is structured, it says a life insurance council may be recognized, and this would be a self-regulatory organization that would take over the licensing and the day-to-day regulation of agents, but the bylaws and resolutions of such an organization would be subject to approval by the superintendent. So we wouldn't be losing control of what's happening in the regulatory sense.

I guess 75% of what's in the bill is really setting out how that organization would be structured. It would be structured along the lines of other provincial organizations. Here in Ontario, on the general insurance side, we have the Registered Insurance Brokers of Ontario, which is a self-regulatory organization. It functions in a way that's quite similar to the way this life insurance council would function.

One other provision—a series of provisions, actually—deals with replacement activity in life insurance. At the present, if you have a life insurance policy and a salesperson approaches you and convinces you that you should buy a different life insurance policy and replace the one you have, you have to fill out a form. It discloses some information about the old policy and the new policy, but it isn't necessarily very effective in terms of what it's supposed to do. What it is supposed to do is make sure that the consumer understands there may be some disadvantages in replacing this policy, because some of the older policies had tax advantages or other advantages that the new policy may not have. Because these are complex products, the idea is to try to make sure the consumer understands what's happening.

Some in the industry have advocated that the—and I should say also that here we're dealing with products where there is a big first-year commission for the agent. On the one hand, you want the public to be able to replace insurance policies if it's to their advantage to do



so. On the other hand, we have to realize that there is an incentive to churn business and that some life insurance agents will go and sell a lot of policies and then they'll change companies and go back and tell their clients, "Now, this is a lot better product." The clients may very well say, "Oh, okay"; they trust their life insurance agent, they buy the new product and of course that generates a lot of new commissions for the life insurance agent.

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In the new rules, we try to strike a reasonable balance, and instead of placing obstacles in the way of replacement, which is one approach that some in the industry I think would advocate, we really put more responsibility on the agents and the companies for making sure that these replacements are not inappropriate to the circumstances of the consumers. We have a number of ways of doing that. The form, which is prescribed by regulation, will be made much more clear. It'll be written in plain English, it will feature a number of important consumer tips that people should bear in mind when they are replacing policies and so on, and also some of the other things I've mentioned: the increased duty of care on insurers, for example, and the code of ethics for agents will also reinforce the importance of dealing properly on their insurance replacements.

**Agent licensing:** This is kind of a technical thing, but right now agents' licences are issued for one year only and then they all renew. They all expire on the same day, which is kind of an odd way to do it and administratively very difficult. What we propose is that in future, agents' licences would be for two years and they would expire on the agent's birthday, so it would make a more even distribution of work.

Also, there's a provision for networking regulations. This is a provision to enable the government, if it feels that it will be necessary, to prescribe regulations governing how institutions would network each others' products; in other words, enter into arrangements to sell the products of different institutions, and those regulations I don't think will be drafted right at this time. But the authority is there to draft them if it seems necessary.

That's an overview of the life insurance provisions, and I guess we'll be coming back to questions or comments.

**Mrs Caplan:** Actually, I have a few questions. As you know, because I'm sure you read everything I had to say about this in second reading—nobody's laughing, so I am assuming that they did read it—I'm quite supportive of the proposals in the area of certification and improvement of education and competency for life insurance agents.

One of the questions I had was, did you consider the concept of a separate act? One of the concerns I had, and I raised this on the second reading debate, was that this is buried inside another piece of legislation and I think diminishes the importance of the creation of a self-governing regulatory regime, which will in fact place responsibility and accountability not on the regulator but on the companies and on the agents, and I think that is a good thing. But to have it buried inside a piece of legislation in an omnibus bill I don't think does justice to

the importance and the significance of these steps that you're taking. Why would you not put it in a separate act to govern life insurance agents or the industry?

**Ms Atcheson:** I'd like to go back. Minister Charlton announced, in the fall of 1992, a review of all of the financial services legislation in Ontario, with the exception of the Securities Act, which in fact, from that time, was a very large undertaking, and at the same time announced that the credit union piece would be first. That had always been the intention of the government.

What it was decided to do, when credit unions were going forward, was to bundle with it everything else that was ready. That's what really forms the basis of Bill 134. We took whatever had been through disclosure to the public, extensive consultation, whatever. Interestingly enough, the same stakeholders in many ways have different primary interests, but whenever you do anything in financial services now you tend to be working with all of the same stakeholders across the whole sector. They may have some things that they're more interested in and less interested in in the bill, but we did the most coherent thing at the time, which was to take everything that was ready and bring it together, because all of the same stakeholders were involved in all of those same issues.

**Mrs Caplan:** Having been involved with the regulated health professions legislation, which gave to each of the professions a separate act, I thought gave greater clarity as far as the public interest was concerned and was more transparent in enhancing the public interest, both from an educational point of view as well as—you know, if you're a life insurance agent or you're interested and you phone up and say, "Is there an act governing the life insurance industry?" the answer is not as clear or easy to access. So it was along those lines.

There is still time for you to bundle it that way, and I think there would be agreement, or I hope there would be agreement, not to delay it in any way. That's not the intention. But certainly I would hope that you would consider perhaps putting it all together with the heading of An Act to Regulate the Insurance Agents. But that was our only suggestion, not a question.

The question I have is on churning. I know that this is one area where the industry has been very vocal about wanting in fact stronger and tighter regulations or processes. They really don't believe that the proposals in the legislation will respond to the concerns of churning, and they've suggested that the proposals you've made are going to make the matter worse. So I'm wondering how you reconcile what you're doing with the industry's concerns, who are saying, "Make it better; don't make it worse."

As a corollary to that, are there any penalties that you've identified in the legislation should anyone have a legitimate case of churning which they can bring forward?

**Mr Savage:** To answer the second part of the question first, there are a number of things. Under the code of conduct, code of ethics that we mentioned, a person would lose their licence or could lose their licence for non-compliance with the code of ethics. We would expect to have a specific provision in the code of ethics dealing



with replacements. So that's about the most significant penalty we can levy, to take away the person's ability to earn their livelihood.

**Mrs Caplan:** Because we haven't seen the code of ethics yet, and there's nothing in the legislation—

**Mr Savage:** Yes, I understand that.

**Mrs Caplan:** That's the reason I raised the question. That's good to hear.

**Mr Savage:** But on the other part of the question, I think you have to appreciate the different interests that are afoot here. As I mentioned, we want to make sure that consumers have the ability to replace policies, because many times it's in their interest to do so. But at the same time, we don't want to see churning.

Some of the companies in the industry have sold policies over the years, and times change and ways of thinking about these things change. Whole life policies are generally more expensive than term insurance policies. You know, 10, 15, 20 years ago, companies sold a lot of whole life policies. Now many consumers are looking at their insurance needs and concluding that term insurance would be satisfactory for them, and term insurance is generally much cheaper. The typical replacement activity that we see is somebody replacing a whole life policy with a term policy.

So, if you were a company that was selling whole life policies, what you want to do is make sure that replacements don't occur. So what you would like to see is a regime that makes it very difficult to replace life insurance policies and puts a whole lot of red tape and bureaucracy in the way of the consumer. That's where we have to strike a balance. We don't want to interfere with legitimate replacement activity, and in many cases it is legitimate. At the same time, we want to be able to take action against agents who are churning and who do not have the best interests of their client in mind.

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I think the majority of the companies in the industry support the middle road that we've followed here. The kind of replacement form that we're talking about in the future and which is drafted—there's a working group set up and working on it right now—is a much clearer form. It provides much better disclosure. With the other provisions that we have, we feel very confident that it will provide a much better control over the problem.

**The Chair:** If there are no other questions, if the Finance ministry would proceed with its briefing.

**Mr Glower:** I'd like to briefly take you through the changes to Bill 134 governing the credit unions and caisses populaires. I've tried to group these into five themes. First is a theme that modernizes the corporate structure and governance of the credit unions and caisses populaires. The second theme is one that enables access to new sources of capital through the sale of equity shares and debt instruments to members and the public. The third theme is prescribing capital adequacy and liquidity standards which we believe are comparable to those of other governing financial institutions. Fourthly, the theme is enlarging the range of permitted businesses. The last theme is providing mechanisms whereby credit

unions and caisses populaires can provide assistance to weaker units to improve their performance and viability.

Under the first theme, the modernization of corporate structure and governance, there are a number of parts that deal with it, and I'll just highlight them. Part II of the act, dealing with the objects and powers, essentially identifies that the provision of financial services on a cooperative basis is the principal object of credit unions; they are largely confined to the provision of financial services. It also sets out the powers and objects of credit unions in that it confers on them the powers of a natural person, which enables them to engage in any business and exercise any powers incidental to that business, subject to any restriction in the act. As I said, the primary restriction is that they are confined to the provision of financial services. The general restriction relates in that it's to provision of financial services. It's primarily to members, depositors, subsidiaries and affiliates.

Part IV of the act deals with membership. It establishes the membership basis for credit unions, and that is subscription for membership shares. That entitles them to the right to vote at meetings on operational matters and for election of directors and committees. Also, a right of membership is based on the principle of one member, one vote. That has not changed. The second basis for membership that is established is the bond of association. In this bill, we are making allowance for a maximum of 3% of the total membership to include persons or unincorporated entities who fall outside their bond of association. This would enable credit unions to serve a larger market. As well, all levels of government are permitted to obtain membership in a credit union, and members who no longer fall within a bond will be able to continue to retain their membership for as long as they live. This part also sets out rules governing withdrawal from membership, as well as the expulsion of members.

Part VII sets out a number of issues dealing with directors and their duties, audit committees and auditors and board policies. With respect to directors, it establishes the duties and qualifications of directors, officers, auditors and members of the audit and credit committees. It also spells out in greater detail the qualifications of directors and committee members, codifies some of the liabilities of directors and officers, and provides a much more comprehensive scheme to deal with conflicts of interest.

Directors' duties of care and confidentiality are supplemented by a specific recognition of a director's duty of confidentiality respecting members' financial affairs. Directors have personal liability when their conduct falls below the standard of a reasonably prudent person, although a credit union could purchase insurance to indemnify and insure those directors if they've acted honestly, in good faith and in the best interests of the credit union.

With respect to the auditor, the bill extends the auditor role to include a duty to report on any transactions or conditions that come to the auditor's attention that would affect the wellbeing of the unit and that, furthermore, in his or her opinion are not satisfactory and would require rectification.



It also mandates the establishment of an audit committee, including reporting to the board, the auditor and the deposit insurer any misappropriation of funds or property of the credit union, as well as contraventions by a director, officer or employee of the act, the bylaws or the regulations.

Boards will now be required to establish investment and lending policies and procedures, as well as procedures to resolve conflicts of interest.

Investment and lending policies will have to be consistent with the policies that a reasonably prudent person would apply in respect of a portfolio of investments and loans in order to avoid an undue risk of loss as well as to obtain a reasonable return.

Part IX deals with restricted party transactions. As you can imagine, these could be very numerous, depending on how you interpret what a credit union's role is, or they could be few. This is something we are going to be dealing with through the regulations.

Part X deals with member meetings and voting. It deals not only with meetings of members, but because of the new classes of shares, it would deal with meetings of shareholders.

Members will be able to submit to the board proposals for discussion at general meetings which the board would be required to put on the agenda unless the proposal would fail to meet certain criteria.

We've also provided for telephone and electronic meetings by boards, and members will be able to vote in an election of directors or any other matter requiring their approval through either ballots cast by mail or through electronic means.

Looking at the second theme, enabling access to new sources of capital, I think we had a fairly fulsome discussion on that this morning, but I'll just review it to put it totally within the context.

As we've said, it establishes a new capital structure for credit unions so they will be able to issue non-voting shares in addition to the membership shares. This in our view will assist credit unions in increasing their capital base and also provide them with the financial resources to expand the services they provide to their members.

These shares will not have voting rights except in specified circumstances, and those would normally be circumstances that attach to the specific class of shares.

If the shares are sold exclusively to members, credit unions could opt to issue them under an offering statement regime which is subject to the director of credit unions' approval and is similar to that used today for cooperatives in the Co-operative Corporations Act.

If shares other than membership shares are offered to the public, a credit union would have to file a prospectus in accordance with the provisions of the Securities Act.

Issues of disclosure with respect to non-voting shares to members would be disclosed under an offering statement or under a prospectus if they are issued to the general public. Credit unions will also be required to make continuous disclosure to investors of all material changes in the position of the credit union and refile an offering statement every six months if a unit wishes to

continuously offer its non-membership shares. The bill also establishes an opportunity for a second market in the case of non-voting shares.

Under the third theme of prescribing capital adequacy and liquidity standards, part VI deals with levels of capital and liquidity that a credit union must maintain. This is a much more flexible and modern regulatory regime for minimum capital requirements and is based on a percentage of a credit union's risk-weighted assets, as well as a leverage test of 30 times capital in order to promote retention of surplus earnings that have been built up over the period of years.

We also give the director of credit unions the authority to order a credit union to increase its level of capital and/or liquidity even in situations where a unit may already be in compliance. This isn't just to ensure the financial security of the unit, but as new products come on the market, the regulator has to be sure that the level of risk contained in some of those new products sometimes has to be offset by additional levels of capital, at least until the marketplace as a whole becomes much more familiar with these types of products.

Under the theme of enlarging the range of permitted business activities, there are some significant changes here. This is dealt with in part VIII of the bill.

Part VIII identifies the businesses and business activities that a credit union may undertake, as well as sets out the limits on credit unions carrying on the business of insurance, providing fiduciary services and making investments and loans.

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Loans under the statute will be governed by a lending licensing regime which will include categories such as mortgage, consumer, institutional, agricultural and commercial lending. The bill will also grandfather current lending bylaws so that credit unions are deemed to have a licence equivalent to their present bylaw.

The changes in the investment area: The bill replaces the "legal for life" investment rules with a prudent portfolio standard, although certain qualitative and quantitative restrictions will continue to appear in the regulations. All credit unions will be required to establish minimum investment and lending policies and procedures that would have to meet prescribed standards.

On the borrowing side, the bill introduces for credit unions more detailed provisions dealing with the pledging of assets and the issuance of subordinated debt and will require the director's approval if credit unions wish to pledge assets to secure loans from their leagues.

With respect to guarantees, credit unions will be permitted to give guarantees, including letters of credit if, for prudential reasons, the guarantee is for a fixed sum of money and the guaranteed person has an unqualified obligation to repay the credit union.

I think we touched a bit on the insurance, but with respect to insurance, the regulations will be designed to prevent the retailing of insurance in branches by credit unions as well as prevent the use of customer confidential information to assist in the distribution of insurance policies, other than those related to credit products like



credit-related life insurance and products such as travel insurance. Credit unions will also continue to be allowed to distribute group insurance products.

On networking and subsidiaries, credit unions will be permitted to enter into networking arrangements with subsidiaries and other prescribed entities and they will also be able to establish subsidiaries.

Under the fifth theme, dealing with mechanisms whereby credit unions may provide timely assistance to weaker units, we're looking at part XIV of the statute. This deals with the organization, responsibilities and power of the deposit insurer and a new thing called stabilization authorities.

Stabilization, briefly, is an important self-help safety net which enables credit unions and caisses to correct emerging problems prior to them growing and threatening the viability of a unit.

OSDIC, or the Ontario Share and Deposit Insurance Corp, will be responsible for the stabilization activities for all credit unions and caisses populaires, although the bill will also permit a league or a group of credit unions to apply to the deposit insurer to become the designated stabilization authority for its membership.

Stabilization authorities, regardless of whether they have been delegated the duty, or the deposit insurer will supervise credit unions that are in financial difficulty in order to help them correct business practices. Furthermore, they also may get involved in supervising the day-to-day management of a credit union, establish guidelines for the operation of the unit. Depending on whether it's the defaulter or the voluntary stabilization authority, they may also provide financial assistance to enable a credit union to continue its operations.

The deposit insurer role will continue in such that they will have the power to administer a credit union to help it to correct its problems and to continue as an ongoing business or to amalgamate it with another credit union or, lastly, to wind it up.

The deposit insurance reserve fund is there to finance all of the deposit insurer's activities, including statistics gathering, acting as the stabilization authority, paying the administration costs for voluntary stabilization authorities, administering credit unions, liquidating units and paying out deposit insurance claims.

There will also be a power for the deposit insurer to collect differential deposit insurance premiums, although these could not be assessed on the basis of belonging to a league or a stabilization authority.

The other parts of the act: For example, part I basically deals with definitions. Part II establishes the basic framework for regulating credit unions and provides for the appointment of the director as the principal statutory official.

Part XI gives the regulator the power to inspect and identify information that a credit union must file. Part XII provides the director of credit unions with broad enforcement powers so that in addition to specific powers which are contained throughout the statute, the director could also order a credit union to comply with any provision of the act to fix harmful business practices, dispose of

unauthorized investments or loans and stop taking deposits and, if necessary, to suspend business.

Part XIII governs the incorporation of leagues and addresses certain issues which are unique to them. All the provisions of the act that govern credit unions also govern leagues, although there is a specific ability to exclude by regulation sections of the act making them applicable to leagues.

Part XV deals with dissolutions, amalgamations and reorganizations. We also have a more expeditious procedure for dissolutions in this area where a credit union has no assets and a minister is authorized to compel the credit union to amalgamate if the viability of the credit union is questionable.

Part XVI is the enabling authority for regulations, part XVII sets out the offences and establishes the penalties under the statute and part XVIII enables credit unions to enter into extraprovincial agreements with respect to the operation of credit unions in other jurisdictions. As well, there is an assessment power which would enable the ministry to recover costs of regulating credit unions.

That's three years of work in 15 minutes.

**The Chair:** Thank you very much for your comprehensive briefing. Are there any questions?

**Mr David Johnson:** I was told a story by one small credit union—I can't recall which one it was precisely, to tell you the truth; it was several weeks ago—of an instance where there was a Legion in a particular town, I guess it was, and this credit union was associated with that town. The Legion was a member of the credit union somehow. I don't know how this works exactly, but many of the members of course were members of the credit union.

The Legion came to the credit union, as I can recall the story, and needed an improvement to the building. The members were in good standing in the community and very reputable and respectable, and the credit union was delighted to be able to be involved, but there is some kind of ceiling, I guess, on how much can be loaned to a particular entity and the Legion's request exceeded this ceiling.

I guess (a) is that something that's controlled locally or is that something that's controlled through a provincial bill, and whatever letter of the alphabet I'm at now, is that something that has been addressed in this particular bill or is that a problem that will still exist?

The upshot of the whole thing was that the Legion had to be turned down and sent to a bank. I think the bank consented, but part of the arrangement was that the business shifted from the credit union to the bank, and I suppose many of the members followed suit. It was a little bit of a catastrophe for the credit union.

**Mr Glower:** Let me outline what we presently do and what the statute will do. Just for everybody's benefit, Mr Johnson refers to a particular Legion. A Legion, from a statutory point of view, is considered to be an unincorporated association. By virtue of being an unincorporated association, the liability for any business it transacts or conducts transfers to all the people of that Legion. So when the Legion would undertake to borrow money and



if it should default, all the people belonging to that Legion would, for all intents and purposes, be on the hook for that default.

The present statute in fact sets out a cap of 1%, I think, of the capital of a credit union, which is in essence, from a prudential point of view, a very small number, which is likely why that Legion was turned down. We recognize that it is a very small number. It's a statutory cap, although they may have had a lower cap in their bylaws. I don't think they would have.

What we are looking at under the present statute, under Bill 134, is that, as with other types of loans, we have removed statutory caps from the bill. We have gone through and, in the regulation on lending, we are looking at different types of ultimate caps or limitations.

I'm sure the minister has said on more than one occasion that we have either removed and/or expanded—and in the case of unincorporated associations we are looking at expanding. We are looking at expanding that to 1.25%, but before everybody laughs, that will also be on the basis of what's called the regulatory capital and deposits of the credit union, so to put that on the other side of the balance sheet which everybody understands: assets.

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If a credit union had 3% in capital under the present statute, the one in operation, its limit would be 1% of the 3%, and under the new law, it would be 1.25% of the total assets of the credit union. So it's a significant improvement, but we would still reserve the right on the basis of the size of the credit union to lower the 1.25%. The 1.25% would be the maximum.

That still wouldn't guarantee that every single Legion could get those loans, but I hope people appreciate, from the prudential point of view, that we don't want to see members who also belong to a Legion hall be on the hook for a loan that they may not have realized was so large, and ultimately they would be personally responsible for.

**Ms Atcheson:** In fact it is standard in all legislation governing financial institutions to have rules, for instance, that limit exposure to single loans. The issue is where you set them so that you don't create burdens that aren't justified and have the benefits of the lending available, but it is certainly standard to have those types of single investment loans for prudential reasons.

**Mr David Johnson:** I'm sure. That only makes sense. I guess the situation here, though, looking at a credit union, particularly a smaller credit union where they know their people, in a case like this where they know the town, the members of the Legion, obviously good citizens, and my suspicion is they would want to be on the hook. I'm sure the decision to expand the Legion or improve the Legion, whatever it was, was taken with the full knowledge of all the members, and they would be good for that, so there's no question of being on the hook.

It just points out perhaps the difference between a credit union, particularly many of the smaller ones who have a good finger on their members, and a bank. In a

bank you would perhaps not know the moral character or see the person at work every day or see the person in your little town every day and understand what the risk is as much as you would in a credit union. I don't know how you deal with that exactly, but it seems to me that a credit union should have a little more flexibility in that regard than a sort of traditional banking institution.

**Mr Glower:** I was going to say a couple of things. I think the example really points to the fact that we do have to broaden the limitations, which hopefully we have successfully done or I should say I know we've successfully done, because 1.25% of total assets is quite significantly larger than 1% of the reserves.

But for those situations we've also allowed credit unions now to—well, they could have before as well, but I think it's a little clearer and a little more obvious. Credit unions and caisses will be able to get involved in syndicated loans. Just to make sure it's clear, syndicated loans would be a group of credit unions that essentially agreed to contribute to one loan. They would all put in, whatever their limitations might be, they would all make a contribution to that loan so that a member of any one of those contributing credit unions could then ultimately receive the loan. In your particular example, this credit union may have spoken with one or more credit unions and said: "This loan is beyond our capability. Would you want to be a part of this loan? We could syndicate it." Then the loan could have been made to the Legion.

That is something that's available today, although it may not be as flexible as we propose to allow it to be, but it certainly is an option that is there now and will basically be in the future.

**Mr David Johnson:** I want to move on to one last point. On that, I may say that in certain vicinities I guess that may make sense. My guess is that in rural parts of the province, I don't know how closely linked various credit unions are, and it may not make a whole lot of sense for them to syndicate because they may be geographically separated or something. It just may not be easy to do, so I suspect that this could be of limited value depending on where you are.

Another story that was told to me, and I don't know if this is just a comment or if this bill deals with it or not, but it's the story of two credit unions, one having difficulty having loans, I guess, that were either partially in total default—in both categories, I guess: some perhaps in total default, some in partial default. That particular credit union was in deep trouble. Another credit union that in this case was nearby and had the—what would we call him, the general manager, let's say?

**Mr Glower:** Yes, fair enough.

**Mr David Johnson:** The second credit union was stepping in to give assistance, but there is some mechanism in place through the province. Who would step in from the province?

**Mr Glower:** It could be ourselves or the deposit insurer.

**Mr David Johnson:** In this case the story that was given to me was that whoever it was that steps in from the province of Ontario came from Queen's Park, from



the ivory tower, and didn't understand the local situation and spent six months—the situation, far from improving, got worse and if only the nearby credit union B had been permitted to—he was telling me: “I looked at their books. I went through them and I knew that these could be recoverable and these, with a little persuading, could be recoverable etc, and we could make this work out.” But when the province stepped in, it got much worse and the amount of money that was lost was magnified.

My experience is somewhat limited, obviously, by the way I'm describing this, but is that situation dealt with here in the bill, or do you see some flexibility in terms of dealing with situations like that?

**Mr Glower:** I obviously can't speak to the specific situation, but I think the bill provides maximum flexibility. Certainly every situation is going to be different. I know that often what has happened is that when—usually the deposit insurer does go in. They do make an assessment to find out what the worst-case scenario would be, and that's what is called the so-called liquidation value as opposed to the going-concern value. It's necessary for the deposit insurer to make that assessment in order to be aware of their own particular exposure.

I think the mechanism here, though, that I described with respect to stabilization should ultimately prevent the type of situation you've described from even occurring to begin with. In other words, it should not get to that level. The stabilization is intended to allow the deposit insurer or a league, to the extent that they agree to undertake that responsibility, to not only do upfront monitoring but, at the time they identify some declining trends, they can go in there either—let's use the situation as to where it's the league that's doing the stabilization.

It becomes one of their own who is going in to now examine that credit union and investigate the declining situation and put in place solutions either through management or policies or, if necessary, take over the running of the credit union for a period of time, without the so-called government intervention, but to put it back on its feet and to take whatever measures are necessary to stabilize it or return its viability.

I think it's been a question in the past as to whether that flexibility exists today, but it is more than evident in this bill that flexibility is not only required but is present, and it's the whole gambit of stabilization.

**Mr David Johnson:** Has there ever been an argument that the government assessors lack the local sensitivity? Maybe I'm fishing around here.

**Mr Glower:** I'm sure it's been said once.

**Mr David Johnson:** Is that a concern, that there are so many different conditions across the province of Ontario?

**Mr Glower:** It's true that we obviously cannot be aware of all the local conditions. When we go in we are going in from the point of view that there's a depositor out there who's insured up to \$60,000 and we want to make sure the depositor will recover the money. We try to be sensitive to local economic, or whatever, conditions, but that doesn't necessarily always translate into “Let's save this credit union at the expense of the depositors,”

or in fact at the expense of the rest of the system. If a credit union is going to have a problem, it is going to cost everybody else. I think the deposit insurance policy has been the least-cost solution to the deposit insurance fund.

**Ms Atcheson:** It is fair to say, I think, that all of the players in the system have an increasing commitment, though, to doing precisely that: to looking at amalgamations, rationalizations in a very different way as opposed to—in other words, looking at the full range of options in the most helpful way possible. I think that's partly one of the supports for stabilization.

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One still has to recognize there are always conflicting interests when any financial institution is in difficulty, but there's I think an increasing understanding and commitment to doing that. OSDIC will be here and I think you'll hear that from them as well.

**Mr Gerry Phillips (Scarborough-Agincourt):** My apologies if these questions have been asked earlier. Can you give me kind of a layperson's quick rundown on what new things the credit unions are permitted to do that they weren't permitted to do before?

**Mr Glower:** The first thing I guess that comes to mind with respect to bonds of association—I'm just going to go through the overview, so this is in no particular order. With respect to—

*Interjection.*

**Mr Phillips:** He said “layperson language.”

**Ms Atcheson:** I think we were clarifying the question. I think the question was directed towards the powers of credit unions.

**Mr Glower:** Strictly business powers?

**Mr Phillips:** I'm just trying to think, if I'm someone who wants to deal with a credit union, what new things can I get out of my credit union I couldn't get before?

**Ms Atcheson:** In terms of products, services, that emphasis?

**Mr Phillips:** Yes.

**Mr Glower:** We talked at length a bit, for example, about the purchase of investment shares. If I wanted to be an investor as opposed to strictly a member in a credit union, that would certainly give me certain opportunities to take my money, put it into the credit union for a different level of investment in the hope that it's invested back into the community.

On the lending side, certainly there is a broader ability—and I think we addressed this a bit—for credit unions to make not only larger loans but as well to syndicate loans and to participate, which is a form of investment, in loans, which again is questionable as to whether they could do that under the present statute.

On the networking side and the subsidiary side, credit unions now will be able to own subsidiaries, which would mean that, either through the ownership of subsidiaries or affiliated companies, they could network a lot easier services of other groups within the cooperative system or services beyond the cooperative system.

**Mr Abols:** A few smaller areas. For example, they



will now be able to provide limited fiduciary services in the way of administering trust accounts for lawyers. Currently in the Law Society Act there's a list of financial institutions that can administer lawyers' trust accounts, and credit unions, for some reason, are not included in that list. We're going to put them in that list.

They'll be able to take institutional deposits from non-members. So, for example, if a local municipality or government wanted to park their money in a particular credit union for a time, they'd be able to do that.

**Mr Phillips:** It may be useful, if it's easily done, just for me to sort of understand what the new—I'm just thinking of it from a consumer point of view, which is where I come from. What new can I get from my credit union?

**Mr Abols:** Essentially, I think the way to understand it is this notion of putting credit unions on a level playing field. Anything that the banks and trust companies are doing today, and all the new things that they're doing in the way of offering broader investment services, access to other types of financial products such as insurance or trust services—

**Mr Phillips:** I understand, but you understand this stuff well. I don't know—

**Mr Abols:** The point I'm getting at is that we're putting them in a position where they can do all those things. Today they can't largely because their investment powers are limited. Harvey mentioned subsidiaries. That's really the way the banks are now providing all these products.

**Mr Phillips:** But it would be helpful for me if you just say, "The credit unions can offer these services right now; under this, they can offer these services."

**Ms Atcheson:** You'd like an illustrated list, right?

**Mr Phillips:** Yes. You assume I know more than I do. I've no idea what banks really offer, so when you say they can offer what the banks do, I don't know what new they can do.

The second thing is, providing the mechanisms whereby credit unions can provide timely assistance to weaker units to improve their—I wouldn't mind a layperson's explanation of just how that might work.

**Mr Glower:** That's the process that we call stabilization. Let me first try and define that for you, and that I think will help. Stabilization is what we call a process of monitoring an early action or intervention in order to preserve the viability of a credit union and eliminate any causes of decline in performance. That's what stabilization is all about. If a credit union is unable to operate profitably or has certain operational deficiencies, stabilization means we identify those trends, we identify the problems, and we implement certain actions to modify or eliminate those negative impacts. That is what the assistance to the weaker units is all about.

Who in fact engages in it is the second part of the puzzle. The statute basically says that OSDIC or the deposit insurer is the default stabilization authority. In other words, it is charged with the responsibility to undertake stabilization. OSDIC has the power to sub-delegate that responsibility to what we call a league or a

group of credit unions. For example, there are three leagues in the province, so any one of those three leagues could in fact say, "We want to be in this game." Subject to whatever standards OSDIC would set out, they could then undertake that responsibility.

Once the identification of the problems—and that's the key part of stabilization—has taken place, and in fact there is an actual problem, we can get into a process called supervision. This is laid out in the statute. A simple word is "curatorship" for supervision. It's essentially there to reduce the potential loss to the deposit insurer and the system as a whole, and impose whatever mandatory operating requirements may be required.

For example, they could ask a credit union to correct any practices that are contributing to a problem situation; they could ask the credit union's directors not to exercise certain powers that the credit union would otherwise have; they could establish operating guidelines for the credit union; they could order them not to declare dividends; they could order them to set different interest rates, either on the deposit or on the lending side; and, to the extent that it would be a league as opposed to a deposit insurer, they could in fact provide voluntary financial assistance, either repayable or a grant or whatever. These are the operating means to go in and say, "We've identified these problems, we see the declining performance and this is what's required to correct it and put you back on the positive track."

**Mr Phillips:** When you say "providing the mechanisms whereby credit unions and caisses can provide timely assistance to weaker units," is there any risk at all that down the road someone could say, "Our credit union was required to assist one that got into trouble and that's why things haven't gone as well for our operation," or is the healthy credit union completely protected here?

**Mr Glower:** What we have is really a universal deposit insurance system. What that means is that once the costs of fixing the problems are determined, everybody pays the same deposit insurance premium for those costs, and that's present today.

The so-called universality of deposit insurance will continue to the extent that everybody will still be required to pay deposit insurance premiums. The bill provides for a thing called differential premiums, whereby some credit unions will pay a lower premium, depending on the risk they present to the system, and other credit unions may pay a higher premium, depending on the risk they present.

I would characterize the fact that the healthy credit unions, to the extent they stay healthy, will present a lower risk and could benefit, if you will, from a lower premium. The idea behind stabilization ties in to risk-rated premiums; that is to say, if you are now part of the stabilization group, and everybody must be, the early intervention should limit or decrease the deposit insurance premiums for everyone and ultimately the costs, because deficits really should not occur in theory, but certainly in practice the rate at which they would occur is significantly diminished. That translates into lower premiums for everyone.



But if a group of credit unions decides that it wants to do this separate and distinct from the deposit insurer, by virtue of having done that because they know their members, as the francophones will argue, probably, in the public hearings—the francophones say: “We know our members. We’re a smaller group. We’re uniform. We have one operating system. We sort of track every transaction that we engage in. When we engage in the stabilization, we are going to be successful.” Now, you cannot get a risk-rated premium because you belong to that group, but you can certainly get a lower premium by virtue of the work that the group will accomplish, which has reduced the risk of that group.

**Mr Abols:** I would also point out that in terms of the direct funding that a group, either a league or the deposit insurer, would provide through stabilization, the deposit insurer, as a stabilization authority, cannot provide direct funding. The stabilization authority can only provide management advice, guidelines and so on. If a league or a group of credit unions decides to take on that stabilization function vis-à-vis its own membership, then it can voluntarily establish a fund and then assess its members to contribute to that fund. But it is a voluntary fund, “voluntary” in the sense that the leagues don’t have to establish one, but if they do, then their members, of course, would be assessed.

Membership in a league is also voluntary and we do have a segment of the credit union movement that does not belong to a league. So they, by default, would be governed by the deposit insurer as far as stabilization goes. As I’ve mentioned, the deposit insurer cannot provide financial assistance through stabilization, so there would be no cost in that situation.

**Mr Phillips:** One last thing: On the leagues thing, what’s the advantage of the leagues? I know what the objects of the leagues are, but what’s seen as the role of these leagues and the advantage of these leagues?

**Mr Glower:** There are three leagues right now. There are two francophone leagues and one credit union league and a number of independent credit unions. I think the common advantages, because there are certainly different ones among them, are a couple.

One is, there are economies of scale in terms of provision of services: for example, cheque clearing, education, training. Those are the non-financial-type services that a league provides: product marketing, product creation, which then become uniform. Those are some common advantages.

On the financial services side, leagues act as the liquidity pool for credit unions or for their respective members. Just as the Royal Bank of Canada, for example, participates in the Bank of Canada and has all of its cheques cleared through what’s called the Canadian Payments Association, credit unions, through their structure—you’ve got the individual credit union, you’ve got their league and then there’s what’s called Credit Union Central of Canada and, ultimately, the CPA.

I’m going to mention them by name but leave them out of the picture—a credit union central would be equivalent to the central bank. They are the central bank for their credit unions and then provide the types of

financial services like clearing, liquidity; in other words, if a credit union is having problems in attracting deposits and has a super demand for loans, it can go to its league and say, “I would like to borrow some money.” So there’s that pooling of liquidity which is advantageous to everybody.

I mentioned loan syndications before and Mr Johnson questioned, “What if I’m off in a remote area?” In fact, this is another advantage if a credit union is a member of the league. If it doesn’t seek out a neighbouring credit union for syndication, it can go to the league, which holds the liquidity of all the credit unions and can syndicate directly through the league, or use the league as its conduit to find another credit union through which to syndicate.

Credit unions today also have a lot of liquidity, which doesn’t necessarily translate into bottom-line profits because of their very small margins. What they can do is they can buy what are called interest rate swaps. In other words, they can say, “I’ve got money that matures in a short term and I need money that matures in a long term,” and the league can provide that offset for them.

Do you want me to go on? That’s the general picture.

**Mr Abols:** They also provide day-to-day operational advice. Some of these credit unions are very, very small, and just in terms of keeping their bylaws up to date and in conformity with the act, they don’t have the resources. They maybe can’t afford legal services. Central has in-house legal counsel, and I understand one of its duties is to provide that kind of advice on an as-needed basis. Probably the same applies to accounting issues and other operational needs.

**Mr Phillips:** I think I understand. It’s the road to bigness and maybe inevitable, but it’s—

**Ms Atcheson:** It isn’t necessarily a road to bigness in the sense that it can accommodate any range of interests in the movement, but what it does do is provide an efficient way of operating as a system. In fact, every credit union system in every province does utilize the league structure, partly because of the advantages of the central banking. So it doesn’t really force you to a result so much as it does accommodate a whole series of results.

**Mr Phillips:** In fact, you would argue just the reverse, if I use my judgement.

**Mr Abols:** No, but I would just observe the fact that if you look at the membership of Central, the biggest league, it is made up of, essentially, small credit unions. It’s the independent credit unions that are the larger ones. So in fact it’s an organization that fosters and promotes small, locally based credit unions.

**The Chair:** I thank everyone from the Ministry of Finance for making your brief before the committee this morning and this afternoon.

**Mr Phillips:** Even if there were further questions, you’d still thank them.

**The Chair:** Even if there were, I’d still like to thank you. If there is no further business, this committee stands adjourned until 10 am May 12 in room 151.

The committee adjourned at 1707.











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### STANDING COMMITTEE ON FINANCE AND ECONOMIC AFFAIRS

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\*Phillips, Gerry (Scarborough-Agincourt L)

\*Sutherland, Kimble (Oxford ND)

*\*In attendance / présents*

#### **Substitutions present / Membres remplaçants présents:**

Elston, Murray J. (Bruce L) for Mr Kwinter

Johnson, David (Don Mills PC) for Mr Cousens

Owens, Stephen (Scarborough Centre ND) for Mr Jamison

#### **Also taking part / Autres participants et participantes:**

Ministry of Finance:

Abols, Imants, solicitor

Atcheson, Beth, director, financial services policy branch

Glower, Harvey, senior manager, financial services policy branch

Owens, Stephen, parliamentary assistant to the minister

Savage, Lawrie, superintendent of insurance

Smart, Joan, vice-chair, Ontario Securities Commission

**Clerk / Greffière:** Mellor, Lynn

**Staff / Personnel:** Campbell, Elaine, research officer, Legislative Research Service





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of Ontario**

Third Session, 35th Parliament

**Assemblée législative  
de l'Ontario**

Troisième session, 35<sup>e</sup> législature

**Official Report  
of Debates  
(Hansard)**

Thursday 12 May 1994

**Journal  
des débats  
(Hansard)**

Jeudi 12 mai 1994

**Standing committee on  
finance and economic affairs**

Financial Services  
Statute Law Reform  
Amendment Act, 1993

**Comité permanent des finances  
et des affaires économiques**

Loi de 1993 portant réforme  
de diverses lois relatives  
aux services financiers

Chair: Paul R. Johnson  
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## LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON  
FINANCE AND ECONOMIC AFFAIRS

Thursday 12 May 1994

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DES FINANCES  
ET DES AFFAIRES ÉCONOMIQUES

Jeudi 12 mai 1994

The committee met at 0938 in committee room 1.

FINANCIAL SERVICES STATUTE LAW  
REFORM AMENDMENT ACT, 1993LOI DE 1993 PORTANT RÉFORME  
DE DIVERSES LOIS RELATIVES  
AUX SERVICES FINANCIERS

Consideration of Bill 134, An Act to revise the Credit Unions and Caisses Populaires Act and to amend certain other Acts relating to financial services / Projet de loi 134, Loi révisant la Loi sur les caisses populaires et les credit unions et modifiant d'autres lois relatives aux services financiers.

**The Chair (Mr Paul R. Johnson):** The standing committee on finance and economic affairs will come to order. I'd like to apologize to the witnesses who are present today for the delay. I am going to let you know that I'm going to share our delay by every witness group, so you'll only have 28 minutes now instead of 30. I apologize for the members of the committee who are not here. We're going to start.

First, we have some committee business I'd like to share with the committee members who are here, that is, that the Minister of Finance is going to be here on Thursday, May 19. He will be here immediately following routine proceedings but can only stay till 5. He's indicated that ministry staff will be able to remain for the rest of that committee day.

Also, next Thursday at 10 am we have coming before us the Caisse populaire Ste-Anne-Laurier d'Ottawa Inc, and it has indicated it does not need French translation, so we will be meeting in committee room 1.

Also, just for your information, all the members now have a copy of the government amendments.

We'll get right into the business of the deliberations. Mr Owens, you said you wanted to make a comment.

**Mr Stephen Owens (Scarborough Centre):** I just wanted to make a quick request of my colleagues on committee and of the deputants. I have a hearing problem that's developed over the last few days and I'm having difficulty, so if people speak clearly and if the background noise could stay to a dull roar, I would really appreciate being able to hear the witnesses.

## ONTARIO SHARE AND DEPOSIT INSURANCE CORP

**The Chair:** Without further ado, the group before us is the Ontario Share and Deposit Insurance Corp. If the representatives would please identify themselves for the purposes of the committee members and Hansard, then you may proceed.

**Ms Lili-Ann Renaud-Foster:** I'm Lili-Ann Renaud-

Foster, chair of the board for the Ontario Share and Deposit Insurance Corp. With me are Andrew Poprawa, president and CEO, Ontario Share Deposit Insurance Corp; and Rudee Baksh, vice-president, Ontario Share and Deposit Insurance Corp. Permettez-moi de m'introduire. Lili-Ann Renaud-Foster, présidente du conseil d'administration de la Société ontarienne d'assurance des actions et dépôts.

The Ontario Share and Deposit Insurance Corp, or OSDIC, incorporated under the Credit Unions and Caisses Populaires Act, has a strong interest in ensuring that its governing legislation will enable it to provide effective protection to depositors and members of the credit union and caisse populaire movement in Ontario. We also believe that a sound statutory framework will assist our corporation in managing the deposit insurance risks which may be created by our member institutions.

I interrupt ever so briefly to thank the committee on behalf of all of us here for providing our corporation the opportunity of making this presentation this morning.

We would like to discuss with you several key issues related to Bill 134 and provide you with some recommendations for your consideration. Before doing so, however, we felt it might be useful to provide you with some background information on OSDIC and its operations, as well as a brief overview of the current state of the industry. At the conclusion of our presentation, we will be pleased to answer any questions the committee may have regarding our comments.

OSDIC was incorporated in 1977 to provide deposit insurance for members of credit unions and caisses populaires, as prior to that there was no deposit insurance scheme in Ontario. As you are aware, today OSDIC covers member deposits and shares to a maximum of \$60,000, similar coverage to that provided by CDIC, the Canada Deposit Insurance Corp, for banks and trusts.

In 1987, in response to a non-legislated provincial program entitled Program for Change, OSDIC was given the mandate to resolve accumulated system losses of about \$100 million in some 125 units. This deficit resolution program was financed by a guarantee from the province to the extent of \$95 million. Concurrently, the corporation's board composition was changed by appointing the majority of directors from outside the system.

The majority of the losses of these units have now been resolved, resulting in an insurance reserve fund deficit in OSDIC which at December 31, 1993, was about \$70 million.

Taking into account the current government-approved

deposit insurance premium of \$2.10 per \$1,000 of deposits and assuming no further significant claims upon the deposit insurance reserve fund, the earliest OSDIC is expected to recover from its deficit is 1998, about one year after the current guarantee period is due to expire.

The corporation has a further exposure of some \$26 million as a result of successful litigation by a group of unaffiliated credit unions over the return of funds used by the corporation in the early 1980s to resolve financially distressed member institutions. This litigation, currently under appeal, is not expected to be resolved until late 1994.

To discuss with you briefly a little more about OSDIC's operations and the current state of the system, I would now like to call on Andy Poprawa, our president and CEO, who will also discuss with you the key issues we would like to raise with the committee this morning. Thank you.

**Mr. Andrew Poprawa:** Good morning, ladies and gentlemen. As the chair has indicated, I'd like to provide you with a brief update on OSDIC's operations and the system's performance, and then I'd like to talk about some of the key issues regarding Bill 134 that we'd like to raise with you this morning.

To assist in minimizing current and future losses, OSDIC has developed and issued comprehensive guidelines on sound business practices for use by member institutions. In preparing these guidelines, OSDIC was assisted by an industry advisory committee and the Ministry of Finance. These guidelines are presently used by the ministry as the basis for its inspections of credit unions and caisses populaires.

In addition to those sound business practices, we have developed a computerized system for monitoring and analysing the risk of loss in member institutions. Those units which pose a greater risk to the system because they aren't fully capitalized are supervised through a capital rehabilitation program administered jointly by OSDIC and the ministry, with the assistance of an industry advisory committee.

This program stresses the building of surplus by member institutions as the single most important priority. Since the inception of this program in 1987, 85 units with assets of \$1.7 billion have graduated and are now in compliance with the interim capital requirements.

All nine units which are currently in a deficit position are under the administration or supervision of the corporation. By doing so, OSDIC can ensure that these units are not posing further risk to the system or to depositors. Units found to be viable are rehabilitated and returned to the community they serve.

Since the commencement of the Program for Change, OSDIC has assisted in the rehabilitation of 45 credit unions and caisses populaires with deficits of over \$23 million. Those units which are not viable are wound up in an orderly fashion and the business is transferred to a neighbouring unit.

In your package today, we've provided you with some system statistics. I won't get into the details, but just a couple of highlights, if I may.

At the end of December 1993, there were 529 active credit unions and caisses populaires in the province, holding member deposits of \$11.7 billion. This compares to about 925 a decade ago, with assets of about \$5.6 billion. They serve 1.8 million Ontarians in 930 locations. They range in size from \$50,000 to over \$800 million in assets, and a significant number of these units are small. In fact, 326 have less than \$10 million in assets. Fifty-seven of our member institutions with deposits of \$1.7 billion are caisses populaires. They serve about 240,000 Franco-Ontarians.

Most of our members are also members of a league. There are three such leagues in Ontario, one for credit unions and two for caisses populaires. About 32 credit unions, with deposits of \$2.1 billion, are not members of any league.

Currently there are about 110, with assets of \$4.5 billion, which are not in full compliance with the interim capital requirements as established by the ministry. After-tax return on assets for the system in 1993 compares favourably with banks, at 35 basis points. It's 45 for banks.

The corporation fully supports the policy objectives of Bill 134. Through the legislative review committee consultation process established by the ministry, we have participated in the development of industry recommendations for legislative changes. In addition, the ministry has provided us the opportunity to discuss the specific provisions of Bill 134 and has sought our input on policy and technical issues. As a result, we have already provided the ministry our comments and recommendations with respect to issues dealing with the clarity and workability of the bill. From our discussions, we were satisfied that these issues can be resolved either through amendments to Bill 134 or through administrative practice.

Today, we'd like to raise with the committee a number of issues which will impact our ability to protect the interests of depositors and thus merit further thought and consideration. In particular, I'd like to discuss the administration of the capital adequacy rules, OSDIC's deposit insurance reserve fund, director training, and the proposed stabilization regime.

#### 0950

We fully support the introduction of the risk-based capital system to the credit union and caisse populaire system in Ontario. By allowing our member institutions access to risk capital, the levels of capital over the long term should be increased, thus reducing the exposure to loss to both the corporation and the system.

We also fully support the requirements for full, plain and true disclosure for potential shareholders of these types of capital instruments. We believe that full disclosure will allow potential investors to understand the risks associated with these instruments and prevent the public from confusing risk capital with insured deposits.

The introduction of a risk-based capital measurement system will create a more level playing field and allow our member institutions to compete more freely for risk capital.



The bill gives the director of credit unions and caisses populaires, the chief regulator in the province, wide latitude to allow member institutions to operate without the required level of capital. Past experience has shown that the level of forbearance in allowing member institutions to operate without the required capital has significantly and adversely impacted the corporation's deposit insurance reserve fund. No other financial institution operating in this province or elsewhere in Canada has been allowed such latitude unless it was first placed under severe restrictions or under the control of a regulatory agency. This approach is not consistent with the government's objective of a level playing field in terms of regulation.

We recommend that section 86 of Bill 134 be revised to ensure that credit unions and caisses populaires not be allowed to operate if they do not meet capital rules unless they have been either granted a variation by the director under stringent conditions or are under the supervision of a stabilization authority or are under administration.

As we have indicated, OSDIC's deposit insurance reserve fund is currently in a deficit position of some \$70 million, assuming we are successful in our appeal of the lawsuit brought by the unaffiliated credit unions. The government's loan guarantee of \$95 million which supports our borrowings expires in June 1997.

Bill 134 is silent on the key issue of government support for the deposit insurance function. While the bill makes it mandatory for the corporation to establish an insurance reserve fund, there is no requirement to bring it up to a certain level within a specified time frame, nor is there a provision for government to support the program through a guarantee or authorized line of credit. Other deposit insurers, such as CDIC, QDIB in Quebec and FDIC in the United States, have some arrangement of support from their respective governments.

Given the state of OSDIC's insurance reserve fund, explicit support either in legislation, regulation or through an administrative agreement is vital to public confidence in the system. To date, the level of support provided by the government has been an essential element in maintaining the security and stability of the system.

We have explored a number of options in this area. While there are many alternatives, the model which in our view has the most merit includes the requirement to build a reserve fund within a specified time frame in order to maintain confidence in the system and to reduce the government's exposure to draw on its guarantee.

We believe that the deposit insurance process should continue to be self-supporting. To date, the system itself has paid, through its deposit insurance premiums, the cost of resolving all deficits without any loss to any legitimate depositor in the province. We want to ensure that this record is continued.

We therefore recommend that the bill be revised to provide for a requirement that the corporation's deposit insurance reserve fund attain a level of not less than 1% of system assets within a 15-year period from the time the bill is proclaimed, and to provide the corporation a limited authority to borrow from the government's consolidated revenue fund to support its deposit insurance program.

Credit union and caisse populaire boards of directors are comprised of individuals not normally employed or knowledgeable about the financial services sector. As such, these directors are typically at a disadvantage in assuming their statutory responsibilities. We strongly believe that this has been a major contributing factor to the significant losses suffered in the industry over the past years.

In provinces where credit unions and caisses populaires have become industry leaders, director training and orientation has played a major role in the risk management system. While the bill provides for the government to pass regulations prescribing minimum training requirements, ministry officials have indicated that the government will not pass any regulations unless the industry does not fulfil its commitment to voluntarily train directors.

We recommend that the ministry move quickly to establish regulations requiring credit union directors to take training programs or, at a minimum, set out the criteria on the basis of which it will be satisfied that directors possess the necessary skill and knowledge to competently fulfil their duties.

For many years, the staff of the corporation have been frustrated in their work by the lack of powers to enforce required remedial and corrective action to be taken by member institutions to avoid costly losses. We are very pleased to see that Bill 134 will address this inadequacy in the present regime. Virtually every other province in Canada has a stabilization function that has the power now contemplated for the corporation in the new act. With these new powers, we will be able to assist in preserving the capital base of member institutions by requiring early action to correct identified problems. This will in turn reduce the risk exposure to the corporation and result in minimizing losses and deposit insurance costs.

We are also particularly pleased to see in Bill 134 the ability of the corporation to delegate to the industry the powers required for delivering stabilization programs. This first important step towards self-regulation is most welcome.

While Bill 134 provides the required powers to implement an effective stabilization program, it is unclear regarding the funding mechanisms to be used. We understand it is intended that the voluntary stabilization funds be used as a first line of defence in assisting member institutions to resolve financial difficulties, rather than using the deposit insurance reserve fund. The bill, however, is unclear in this area. It is also unclear about why the government would want to involve itself in regulating voluntary funds.

We recommend that the concepts of stabilization funding be clarified to ensure it's clear that: first, all stabilization funds established are voluntary and the government will not be prescribing the ways funds are assessed and maintained; second, the corporation will not be required to establish a stabilization fund; and third, the funding of the administrative costs of delegated stabilization authorities will be at the discretion of the corporation.

We recognize that the government, after reflecting



upon the submissions made before this committee, may in fact make changes to the bill now before us. In considering these proposed changes, we believe the committee and the government should recognize that any significant modifications to the powers and resources of the regulator or the corporation may impact the delicate balance between the business powers of our member institutions and our collective ability to manage them. We would therefore urge the committee to consider the impact of any motions for amendment on this balancing of powers.

In our written submission, we've also raised a number of other issues for your consideration, but time does not permit discussion of all our points today. This brings us to the conclusion of our remarks, and now we'll be most pleased to answer any questions the committee may have.

**The Chair:** We have about 10 minutes to share among caucuses. Mr Owens indicated that he wanted to clarify something.

**Mr Owens:** First, thank you for your presentation this morning. I appreciate your support for the bill and the advice you've given us.

In terms of the issue of the deposit insurance reserve fund, the 1% solution, as it were, I'm wondering if you could tell the committee what your understanding of the view of the credit union/caisse populaire movement is with respect to this 1%.

**Mr Poprawa:** Certainly. The 1% solution is something that's been looked at by other provinces and other jurisdictions around the world, and the rationale for it is that it provides a balancing between who pays for the protection of the depositor over the long term. There's a general view, no doubt, both in the industry and in government, I think, that the industry itself should always be there to protect the depositor and fund that protection through some kind of mechanism.

Of course, in our business, access to support is extremely important in the case of a problem of confidence in the system. Should a credit union or caisse populaire have difficulties with respect to a run on deposits, we would have to make arrangements to fund that run, to the extent of making sure that all depositors are paid out immediately.

Deposit insurance basically works on an element of trust and confidence. We believe very strongly that at all times the industry should be there to support it. The industry today, however, through the corporation, does not have the ability to build a reserve fund. We have a \$70-million deficit we have to pay off first and we have to work towards building a fund of some sort.

1000

The object of the game here is to put some rules in place for the next 10 or 15 years so we can have a clear path at the end of the day to, as I said earlier, have a reserve fund in place and, second, to reduce the exposure of the government to having to draw on its guarantee. Does that answer the question?

**Mr Owens:** I appreciate your answer. I'm not quite sure it responded directly to my question, but in the interest of time I do want to say that the government, like

OSDIC, is ultimately concerned about depositor security. The way we approach it may be from different ways. The commitment I make to you, the credit union movement and the depositors, is that we'll continue to work with OSDIC and the credit union movement to ensure that we have a high level of depositor security.

Could I just have Harvey Glower respond for 30 seconds to the issue with respect to capital adequacy?

**Mr Harvey Glower:** The approach that OSDIC is suggesting with respect to whether a credit union should or should not be allowed to continue to operate if it doesn't meet the rules may, in certain circumstances, be viewed as somewhat rigid. In a particular situation, if a well-capitalized credit union decides to assist an under-capitalized credit union through a merger or an asset transfer, this well-capitalized credit union may, as a result of the assistance, find itself under supervision. The approach may be somewhat rigid, and you may wish to address that.

The regulatory forbearance the ministry has taken in the past and would like to continue to take obviously doesn't mean a credit union can continue to not comply. In other words, the statute is very clear that they must still comply with capital adequacy rules, and a variation—or this forbearance, if you will—has been granted with certain strict measures. That isn't to say that if OSDIC or the ministry found there was a particular problem, either one of those two organizations couldn't put a credit union under supervision, or in fact OSDIC on its own would have the power to place the credit union directly under administration.

**Mr Murray J. Elston (Bruce):** There are several areas we'd like to get into, but as there isn't a lot of time, how important are your recommendations, in your view, to making your role function properly in the public interest?

**Mr Poprawa:** Thank you for the question. We believe very strongly that the issues of regulatory forbearance and capital and in particular the issue of the funding or some kind of mechanism for funding of the deposit insurance regime are the two critical issues we would like to leave with you for your consideration. Without those, we are placed at a disadvantage in being able to manage the risk that's created for us by our institutions.

**Mr Elston:** It's been some time since I've enjoyed discussions with the organization, but at some point or other we could get a point where there are so many security funds or stabilization funds, so much money taken from the system to act as security, that you start jeopardizing the actual carrying on of operations.

Does your 1% solution, as it's described, cause any impairment to the system in putting aside so many funds? There's required capital adequacy, at one level, and later on we talk in here a little about what the leagues are supposed to have, a voluntary stabilization fund—a whole series of other items. I'm wondering how many of these funds we can afford to have in the system before we start looking at having a large deposit of money sitting around waiting for bad things to happen, and whether that impairs people's opportunities to actually conduct business in a real way.



**Mr Poprawa:** That's a good question as well, from the point of view that there are never enough funds for the security of depositors, and that's been proven time and time again by past history.

You're right. The 1% solution may be a solution that other jurisdictions have used, but it does not take into account the stabilization funds that might be held by leagues and other organizations. From that point of view, there's some obvious flexibility in looking at that number and saying, is that the right number?

For example, in British Columbia, for purposes of establishing the required level, the regulator and the system have gotten together and combined the stabilization fund and the deposit insurance fund, and indicate that to depositors as the level of security they have for the funds in the system. That's one model we can certainly look at jointly with the ministry and the industry.

Our objective here is to provide as much strength and stability in this area as possible. We believe that depositors are now, particularly in the province, looking more and more at the stability and safety and soundness of the financial institutions they're dealing with, particularly in community economic situations. As I said earlier, there's never enough capital.

**The Chair:** You're going to have to allow Mr Johnson. He's got two minutes.

**Mr David Johnson (Don Mills):** It was 10 minutes we started with, so divided by three, that's three and a third minutes, actually.

**The Chair:** If things worked out the way we would hope, that's the way things would be, but that's not the case.

**Mr David Johnson:** I'm sure that's the way they do work out.

**The Chair:** You're eating up your time; a minute and 50 seconds.

**Mr David Johnson:** I'm going to ask you about your first recommendation in terms of ensuring that credit unions do not operate "if they do not meet the capital adequacy rules." You've indicated in your brief that about 110 do not meet those rules at the present time.

**Mr Poprawa:** That's right.

**Mr David Johnson:** But there's a suggestion in section 86 that they can apply for variation. Has there been any suggesting of grandfathering? I don't know what this recommendation would mean. Would it mean that all 110 would be essentially out of business?

**Mr Poprawa:** No. The recommendation basically means that it would be a lot tougher to get a variation from the ministry to continue operating if you did not meet capital requirements. For example, today, units which do not meet capital requirements are allowed to take deposits unfettered, are allowed to grow unfettered, are allowed to take on new risks unfettered, without any regulatory control over them.

What we're suggesting is that the whole area of regulatory tightening of the rules around those particular units, to reduce the risk both to our corporation and the system, be looked at very carefully.

**Mr David Johnson:** I don't know what the level of lack of compliance would be, whether they would fail to meet the capital adequacy rules by a narrow margin or by quite a variation. Is this going to be an onerous consideration for many of these 110 credit unions?

**Mr Rudee Baksh:** In the 110, the range of compliance is very wide. Some of them are very close and some of them are very thinly capitalized, less than 0.5%, less than 1% capital.

The recommendation is not draconian, given that right now we do have some rules operating, but they are not as stringent as they should be. That's what we're saying, not that they should be placed out of business, but that if they are granted forbearance, the rules under which they operate should be very stringent to ensure that the level of risk they pose to OSDIC and the system is well controlled.

**The Chair:** Our time has expired, and we have to proceed with the next presenter. I thank the Ontario Share and Deposit Insurance Corp for making its presentation before the committee this morning.

I'd just like to remind the committee members that when we divide the time up, we have control over absolute time but we don't have control over how long the witnesses take to answer, and sometimes that eats into the next caucus's time. However, you get that back when you have the opportunity to put the first question.

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#### TRUST COMPANIES ASSOCIATION OF CANADA

**The Chair:** The next presentation is by the Trust Companies Association of Canada, John L. Evans, president and chief executive officer.

**Mr John Evans:** I am very pleased to be here this morning to assist you in your deliberations regarding Bill 134. As you know, I represent the Trust Companies Association of Canada and its 37 member trust and loan companies. Most of these companies are licensed to do business in the province of Ontario.

My comments on Bill 134 will be brief and to the point. First, let me assure you that the association supports the informed modernization of financial services legislation, including that applicable to the credit union movement wherever that occurs. We realize that the credit unions have waited a long time for their turn for legislative reform to arrive.

At the same time, we feel that modernization should proceed equally for all participants. It is not, in our view, appropriate for new powers to be given to one group and not to others competing in the same field. In other words, legislative leapfrog is both unfair and out of keeping with the spirit of a level playing field.

Furthermore, such legislation invariably sets up pressures on governments to introduce measures which correct these newly created imbalances. The association believes that a more appropriate approach would be to introduce reforms to all competing sector legislation and regulation at the same time and provide for a common coming-into-force date. This was the approach taken in recent federal reforms, and we feel it has worked both equitably and well.



Thus, while we fully support the aspects of Bill 134 which restore the credit unions to an equal footing with other deposit-taking institutions, we tend to object to those aspects which advance credit union powers beyond those available to their competitors.

More specifically, we note the proposal to grant credit unions the powers to network insurance products. No other deposit taker in Ontario has these explicit powers. At the very least, insurance networking by credit unions should not be allowed to come into force until comparable amendments are made to the legislation or regulations governing competing institutions.

The other area where we take objection to Bill 134 relates to the proposal to grant direct fiduciary powers to the credit unions. The association does not object to credit unions networking fiduciary services through their branches, but we do feel that the creation of these services should be undertaken by a separate trust company subsidiary. This is the approach that has been taken elsewhere, and it seems to provide a workable balance between the need for expanded consumer service and the control of conflicts of interest.

We understand that the intent of the fiduciary provision in Bill 134 is to facilitate trustee RRSPs, but the regulation-making power found in this provision is not restricted to this area alone. Thus, today's intent could easily be altered by tomorrow's reality.

In closing, I would like to note the appreciation of the trust industry for the series of much-needed and welcome changes to the trust company business powers that were announced in the recent budget. We have long asked for the power to expand our business activities into the commercial realm. The minister has, to his credit, responded favourably to our request, and we thank him for this.

At the same time, we would like to point out that other necessary changes to the Ontario loan and trust act await to be made, specifically, elimination of the equals approach, and a modification of provisions relating to legitimate and non-threatening business dealings between related parties.

The equals approach has been a continuing source of difficulty and frustration for the industry from the day the Loan and Trust Corporations Act was proclaimed. We had hoped that by now this feature of the legislation would have been eliminated for a more reasonable and workable alternative such as the designated jurisdiction concept. While this has not happened, we continue to hope that the government will soon realize the merit in our request.

Apart from the equals, it is unfortunate that many provisions such as the related-party prohibitions were hard-coded into the loan and trust companies act instead of being left to the regulations. We note with approval that such inflexibility is avoided to a large measure in Bill 134 as a result of much greater use of regulation-making powers. We urge the government to consider, where appropriate, following this practice more extensively in the future.

Let me again express the appreciation of the associ-

ation for being granted the opportunity to appear before you. I would be most happy to respond to any questions you might have.

**The Chair:** Thank you very much, Mr Evans. We have seven-plus minutes per caucus. We'll start with Mr Elston.

**Mr Elston:** Seven? Twice the time. John, thanks for coming to see us today. Maybe I should start by asking, not you so much but the parliamentary assistant, when it is contemplated the other promised reforms that John has talked about are to be brought in. If you are actually contemplating bringing them in in some timely fashion, the discussion around those things should probably be left to a later date. We should know what you're planning on doing.

**Mr Owens:** I was going to have Terry Campbell respond to some of the detailed issues contained within the brief, but with respect to the policy and the legislative process, the government and the ministry are continuing to work with the trust companies through the association, as well as individual trust companies, to resolve outstanding issues. There is a process ongoing. We would like to get it in as soon as possible, but in terms of resolution of problems and some of the realities around this place, it's not possible to peg a definitive date. We did say we are working in good faith with the trust companies—I think we've demonstrated that good faith through the budget process—and we're going to continue to do that.

**Mr Elston:** What is that line of securities about "clear, plain and truthful disclosure"? What is happening here is that everybody now is coming to grips with the destruction of the four pillars. It's an even playing field, John. I guess that's clear. I was one of those people you used to talk to about equals and other things. Not to go any further on when these reforms are coming, let me ask a question about equals. How is it hampering trust business in Ontario now, or are you speaking more particularly for other-located trust companies, as opposed to Ontario-located?

**Mr Evans:** In respect to the Ontario companies that are also federal companies, for example, they are having to comply with two, in some cases conflicting, sets of legislation and regulation. The business powers issues that the minister responded to in the budget help. They certainly help a great deal. We were most pleased to see those measures brought forward.

Other aspects in terms of the administration, in terms of related-party rules, do continue to cause us problems. A designated jurisdiction approach would certainly go a long way to eliminate the problems from the point of view of federal companies. It would still leave Ontario companies at a disadvantage vis-à-vis their federal counterparts in the marketplace.

The only solution to that, ultimately, is some form of harmonization, which I know is a filthy word in any federal-provincial gathering.

**Mr Elston:** "Filthy" is elusive.

**Mr Evans:** But that does cause difficulty. Some of the large federal companies—I note Canada Trust being one—requested that at least a designated jurisdiction



approach be applied to them, and in fact I think they went even further than that, primarily so they could comply with one set of legislation where they do business across the country.

For a national company trying to compete with the banks, any increase in administrative cost is a factor that is going to detract from their ability to compete on a level playing field. The banks are certainly massively powerful now, given that they've absorbed the majority share, virtually, of the trust industry into their own ranks through their acquisitions. That has to be a major consideration if we're going to continue to have large institutions within the trust industry competing directly and on a level playing field with the banks.

**Mr Elston:** Would the designated jurisdiction or designated area principle provide the trust companies with an uneven playing field with respect to credit unions and other institutions, bearing in mind that you might be carrying on business in, let's say, Durham, Ontario, but choosing to be under the rules and regulations of some other area?

**Mr Evans:** I don't believe it would. The modernizations you're bringing to the credit unions act here in Ontario in Bill 134, with the exception of the insurance networking powers, which bring the credit unions ahead of the other institutions, will as I understand it level the playing field between the banks and the credit unions in terms of their powers and their abilities to do business.

Indeed, the representatives from OSDIC previously indicated that there's a great deal more forbearance in respect to the credit unions than there is with respect to other deposit-taking institutions that might fall under the jurisdiction of the Canada Deposit Insurance Corp, for example. We have very little flexibility in terms of capital. My member companies have experienced a number of difficulties in the last few years as a result of that capital shortfall, and we have not been given the kind of forbearance that's available to the credit unions.

1020

It's a matter of public policy, government policy, to do that, and we're not arguing on that basis. But a designated jurisdiction would simply say you have to comply with the rules in your home jurisdiction, which in this case would be the federal rules, and the federal rules are not going to be significantly different from the credit union rules once Bill 134 is through.

**Mr David Johnson:** You were just mentioning the capital problems that trust companies have been having. Could you expand on that? I'm not quite sure what you mean.

**Mr Evans:** All the failures in the last few years have been basically capital shortfall problems. When the institutions fell behind or below their legislatively required capital ratios, both the office of the superintendent of financial institutions and CDIC were less than magnanimous in their dealings with these institutions as far as their continued survival went.

It started with institutions in the mid-1980s, and rightfully so. The problems the United States faced with the savings and loan industry and the banks down there

caused our regulators to take a very careful look at the problem and to deal with it much more severely and directly than had been the case in the United States. From what the representatives from OSDIC were mentioning this morning, there's a great deal more forbearance and leeway given to credit unions to try to get them back on side from a capital point of view than was ever the case with the trust and loan companies.

**Mr David Johnson:** In general, what are your observations with regard to the capital requirements for all sectors, the banks, trust companies and credit unions? Are they too stringent, given today's economy?

**Mr Evans:** I don't think they're too stringent. They're basically in line with international standards, although the international rules are interpreted quite differently in different countries. But as a general across-the-board standard, the BIS rules the banks are complying with and that hopefully the trust companies will come under at the federal level, if we can resolve some interpretation difficulties, are adequate and fair. That's a relatively high level of capitalization compared to what has been the case historically, but we don't see that as being out of line with prudence and what's in the public interest.

**Mr David Johnson:** Going back to your brief, with regard to networking of insurance products, your objection is that if the credit unions, for example, have this ability, other institutions should have the same ability. At present, I gather, the trust companies don't have this ability at all.

**Mr Evans:** We certainly don't have it at the federal level. It's a matter of interpretation whether Ontario trust companies have that power. It's not that they have been granted the power; it's that the power has not been denied them. I understand some trust companies have been examining this and indeed may be engaging in networking, but there's a controversy about whether they should be involved, because even though the legislation doesn't say they can't, it doesn't say they can either. This is an area of controversy.

But clearly at the federal level they cannot. For the federal companies, it's specifically in the legislation that they may not, and that was a result of the 1992 changes and the power of the insurance industry in Ottawa. Whether this is going to carry on beyond 1997, when the next revision has to take place, is open to question. I would seriously doubt it would remain in place. That's kind of the time frame we're looking at, I would expect.

**Mr David Johnson:** In your view, what is the level playing field in this issue, then?

**Mr Evans:** The level playing field is that you should use your financial services distribution system as efficiently as you possibly can. Given that the most efficient distribution system today is the branch network of the deposit-taking institutions, that should be used to the greatest possible advantage. That would imply that insurance networking is something that would be in the public interest, in my view. That's a personal view that I hold. Some of my member companies would object to that position. Others would strongly support it. I will give it to you from that perspective. Ten years down the road, I would expect that a totally different distribution system



would be in place and you might be talking to Bell Canada about networking insurance products.

**Mr David Johnson:** On the second point you made, with regard to granting fiduciary powers to credit unions, if I'm interpreting what you say here, you don't object to it, but it should be undertaken through a separate trust company subsidiary. I'm not sure how that would work.

**Mr Evans:** I think Canada originally had a very sound basis for managing financial services: the four pillars. We kept things separate. That's not a realistic way of doing business these days. But we have maintained, at least at the federal level, some semblance of the four pillars. We've allowed common ownership, we're allowing common distribution, but we have required that a commonly owned entity maintain the trust power, the investment dealer power, the securities power, the insurance power and the banking power in separate legal entities. That, I think, makes it less likely—it's not impossible, but it makes it less likely—that you'll get conflicts arising in the administration of those powers by a single corporate entity.

Conflicts certainly can exist between the fiduciary power and the banking power and the insurance power and the securities power. There's no doubt about that. If you're administering a large volume of assets on behalf of others as a result of your fiduciary power and you are also underwriting securities and you are also making loans to a corporate entity, that volume of assets that could be invested in the securities of the corporation that you're underwriting or in the securities of the institution that is borrowing from your bank, there's an obvious possibility of using those funds that you're holding in trust to the advantage of other elements of your corporate entity. While it doesn't totally eliminate the possibility that someone may abuse those conflicts, I think it sets the conflicts out much more clearly and it makes it easier for the public and government to monitor how those conflicts are being managed.

**Mr Owens:** Just briefly before I go to Mr Campbell, Mr Evans, thank you for your presentation. It's the view of the minister and our government that the financial services review is a very important cornerstone in terms of modernizing and bringing what is a very good financial service sector into line with global realities. We're committed to doing that. With the assistance of people like yourself and other members of the financial community, I think we've done a good job to date and certainly look forward to addressing some of the issues contained within your brief.

I'd like to ask Terry Campbell from the ministry to respond on a couple of substantive questions.

1030

**Mr Terry Campbell:** I just wanted to make a couple of points, Mr Evans, on two of the issues in your brief. One is on networking. I think from our point of view there's a broad networking issue—that is, the ability of financial institutions to retail the products of other financial institutions—and a specific subset of that relates to insurance retailing.

Our reading of the situation is that both federal trust

companies and provincial trust companies do have the power to network in the sense that they have natural person-powers and their ability to undertake financial services generally is not constrained, except where constrained by the statute. So I think in a general sense, they can network.

On the specific issue that I think you were referring to about insurance retailing, the intention on the credit union side, Bill 134, is actually to achieve equivalency with the federal rules. What the federal trust companies can and cannot do now in respect of insurance retailing we have tried, and I hope successfully, to match in the credit union statute. So I think from our point of view there's actual parity there; there's equivalency. In fact, our legal drafters attempted to use the federal model as the guide. We went at it with a somewhat different approach, but the effect is the same.

On the second issue that you raise about trust powers, fiduciary powers, I think your point is well taken in the sense that if trust activities are going to be undertaken, they should be undertaken as subsidiary. The intent in the statute is not to make credit unions into trust companies or to allow them to undertake a full range of fiduciary activities. If that is to be done, that should be done in the subsidiary.

I think you're referring to one section which would allow credit unions to hold lawyers' trust accounts and to get themselves involved in some RRSP activities. That is the sum total of it, and in some way it's either reflecting current activities or just reducing a small anomaly. The statute is limited. They cannot engage in any trust activity in the absence of a reg, and there is no intention that regulations through the back door would change them into a trust company.

**Mr Evans:** Thank you, Mr Campbell. That gives us some comfort, but you opened up the Pandora's box with your last comment, that in both cases, the insurance networking and the fiduciary powers, it is by way of regulation. I think most people around this table, certainly myself included, understand that what is one minister's intent in respect of regulations may not be another minister's intent in respect of regulations, and the difference between the federal legislation and this legislation is that it's hard-coded in the federal legislation and that the federal government cannot expand by regulation the insurance networking powers of banks and trust companies, whereas that could be the case when Bill 134 is in place.

We haven't seen the regulation. More comfort would have been available to those of us who are observing the legislation if the regulations had been on the table at the time we came before this committee, but that's not the case, and I can understand why. But that's the concern, that it's being done by regulation, and regulations can be changed at the will of the minister.

**The Chair:** Do you have anything further to add to that, Mr Campbell? No? Mr Jamison, we have two minutes.

**Mr Norm Jamison (Norfolk):** I just wanted to ask one question. It really deals with the most recent budget. My question is, won't the recent changes announced in



the budget help trust companies do more commercial lending and give them basically a broader ability to compete in that marketplace? What's your opinion on that?

**Mr Evans:** I think that's absolutely correct. That's what I said the morning after the budget. We were extremely pleased to see those measures taken by the minister, and we applaud him for doing that.

The problem, as there is always a problem, is that the companies that probably could have made the greatest use of those powers in the interim between the introduction of Bill 86, the Ontario loan and trust companies act, and today have been absorbed by the banks. I'm not saying they wouldn't have been absorbed by the banks had this power been available to them, but certainly their options would have been broader had these provisions been available from 1986, when the original legislation was brought forward.

But given that, we thank the minister for taking these steps. We had hoped he would do that, and he met our expectations in regard to those provisions on commercial and consumer lending. Certainly my member companies and the other non-member trust companies are going to be looking very hard at how they can take advantage of those powers to compete with other lenders in the field, and specifically the banks.

**The Chair:** Thank you, Mr Evans, for making your presentation before the committee this morning.

**Mr Elston:** Mr Chair, while we're waiting for the presenters to come forward, I wonder if Mr Owens could give us an understanding of how many undertakings have been given with respect to changes or types of regulations to be brought forward as part of the companions to the credit unions act. Certainly, with respect to the way the drafting is done around insurance offerings and things, there are particular understandings of what regulations are to be passed.

There was a request from our first presenter that certain regulations be put into effect, and I wonder if we can have a working list of those regulations. I understand you may not have them finalized, but in order for us to contemplate what is being done by this bill in a more fulsome sense, I think those lists of regulations you're working on that are pertinent to policy issues, as opposed to just the regular housekeeping, would be helpful to us so we don't get taken off our lines of pertinent questioning.

**Mr Owens:** Thank you, Mr Elston. I can give you and the rest of the committee an undertaking that we'll provide that answer in writing. I don't have the other figures, the information, totally committed to memory, so I certainly wouldn't want to mislead yourself or any of the witnesses here today. The ministry has noted your question and will get back to you.

#### INDEPENDENT LIFE INSURANCE BROKERS OF CANADA

**The Chair:** The next presentation we have this morning is by the Independent Life Insurance Brokers of Canada, Martyn Rice, immediate past president, and James Bullock, president. Please come forward and make yourselves comfortable. Welcome to the committee. If

you would please identify yourselves for the purposes of the committee members and Hansard, you may proceed.

**Mr Martyn Rice:** My name is Martyn Rice. I'm the past president of the Independent Life Insurance Brokers of Canada. Instead of saying that all the time, we call ourselves the brokers' association. We are conscious of the courtesy you do us in letting us speak to you and we hope we do it as succinctly as we can.

We are conscious of the fact too that most people are disturbed at having to face one insurance agent at a time; two must be a little daunting. We hope we'll overcome that. Anyway, we're not lawyers, so we hope that's on our side.

**Mr Owens:** What about the politicians?

**Mr Rice:** As I said, I'm the past president and Jim Bullock, sitting next to me, is now the president. We changed horses last week, which is really why we're both here. James had a long history in the particular function of watching legislation as it affected us: for some 20 years, in fact. I think his first meeting was with Mr Thompson, a name some of you may recall. He has been following changes since then and consequently will be carrying the ball for most of this morning.

There are a couple of things about insurance agents that are worth mentioning, I think. One is that we are the people who actually face the public. That is to say, we carry the insurance company message and the legislative message to them and when we are asked to do things which are a bit peculiar, the public says to us, "What are you up to?" and we have to explain. Some of those peculiarities exist in the existing legislation, and we're happy to see that most of them are disappearing. James will mention them as we go along.

The other thing to mention which I suspect is not apparent to, if I might say this, relative newcomers to the whole system is that in the life insurance world, which includes all kinds of odds and ends like group insurance and segregated funds—a type of mutual fund—pension funds, disability insurance, a number of peripheral or considered peripheral notions, all are part of the package and consequently affect our opinions. But the two markets that exist are really having to do with a method of distribution: those companies that distribute through agents who represent them exclusively and those companies that are represented by agents who themselves represent a number of companies. That distinction really requires a different tone of voice in the legislation. We think there's a need for the legislation to at least realize those two systems exist.

That was my notion of an introduction. As I've said, Jim will carry the ball now, if I may hand over to him.

1040

**Mr James Bullock:** We've appreciated the liaison we've enjoyed over the years. I see some very familiar names here this morning: Mr Owens, Murray Elston. I remember meeting with Monte Kwinter many years ago.

If Bill 134 was passed tomorrow as is, we'd be comfortable. Obviously, there are a few things that we would prefer were done differently. The comments this morning are going to be strictly addressing the issues that we think



relate to how Bill 134 impacts on the public. We have done our lobbying in the past.

I can recall about 10 years ago one of the bureaucrats in Financial Institutions whom I was talking to saying it was his hope that the Insurance Act would be brought into the 20th century before it was over. He wasn't kidding when he said that. What he was trying to tell me was that getting an Insurance Act changed is no mean feat and is not easily done.

With that in mind, we are asking you to bear in mind what you're putting in regulation and what you're putting in the act itself, because what you put in the act could very well be there for another 100 years.

Today we have insurance products marketed through television, through fax machines, through modems, and over the telephone. I'm sure that when that act was originally passed, none of those things were ever foreseen as marketing tools. Lord knows what the future's going to hold, so be careful what you enshrine in the act, because we're going to have to live with it.

The concept of banks being involved with marketing of insurance products we find scary. This isn't because of our perception; it's because of what we've seen in other jurisdictions. In Northern Ireland, for example, or Australia, the banks virtually dominate the insurance market now. Why is that? I know in my life, the insurance company that I choose to insure my house is entirely a discretionary thing. Whether or not I have a mortgage on the house is hardly discretionary. When I'm talking to the banker about the mortgage on the house, if he hands me a long, complicated form about the insurance on the house and says, "By the way, if it's with us, you can skip all that," I get the message real fast.

The power, the coercion, that any lender has when it comes to things like insurance is infinite. Frankly, I don't think the two can be mixed without the public getting hurt. I know some of you may regard insurance as being generic, and, "One is as good as the other." If I can put on my broker's hat for one quick moment, I can assure you there are differences in policies. In my own personal case, the policy that covers my house is with that company because it does not have a limit on sports equipment, whereas a lot of companies do have a limit on the sports equipment that's covered on a policy. I happen to know that is why my broker put me with that company. Your broker may have insured your house with a similar type of consideration, and you may not have picked up on the subtlety. If your banker indicates you'd better change policies, you do. The public is the loser.

In marketing, knowledge is power. If I can peruse a bank's files, I know what kind of discretionary income you have. I know what kind of investments you have. I know what kind of RRSP you have. I even know what insurance you have. I even know your insurance due dates. Knowledge is power. It doesn't matter if in getting that power I am wearing the hat of the bank's own insurance company or just some very, very remote affiliate. If I, as an insurance person, get my hands on that bank data, I have an incredible amount of power and leverage in the marketing of insurance. I think the sharing of that kind of information is wrong. It tends to get misused.

Moving on to the element of Bill 134 that relates directly to insurance, the education requirement right now to become a life agent is very low. In my opinion, it's ridiculously low. Not too long ago, I sent my secretary off to write the exam so she could get a licence so that she could sign in my place on documents. It was a very convenient thing in the office. Can you think of any other profession where you could send your secretary off to get a licence? In no profession worthy of the title would that be feasible.

In fact, there's a gentleman here in Toronto who offers a money-back guarantee on a training course. He trains somebody for one evening and all day Saturday, and he guarantees that you'll pass your insurance exam. It's a crash course. The information that's imparted is probably barely enough to get a licence, and probably the knowledge that went with it would last until about the day after the exam. But it does serve the purpose of getting a licence issued. That does not serve the public.

The havoc that poorly conceived insurance can wreak on a family is into six digits. That's very heavy-duty chaos by not understanding the subtleties, and to have the kind of exam and educational requirement we have right now is a joke. It does not do the public any good.

It has a lot of other ramifications. Mr Savage here can probably tell you horror stories about disciplinary problems he has faced over the years. How many of those disciplinary problems relate to the fact that there are people in the business who shouldn't be in the business?

The brokers' association would like to see educational requirements something along the lines of the standards that the general insurance industry has or the real estate industry has. That's the type of program that is taught at the community college. We would all benefit.

I'm going to tell you something that I've told Mr Savage a hundred times. The one element that disturbs me about the act is that the word "broker" is not defined. As an insurance broker, I'd like to see something in writing that explains that there is such a thing as a broker in Ontario.

The reason for my sensitivity is that the existing act makes it clear that brokerage is not legal. It would be an offence to hold yourself out as representing more than one insurance company, the way the act is now written. As an association, we're doing pretty good when you consider that we're not supposed to exist in Ontario.

Your proposal will bring brokerage in front and centre. Our concern about the definition of "broker" is that the public has a perception of what a broker is. The public has an understanding that if they go to the Yellow Pages and they're looking to insure their car, agents represent companies, such as the agent for Allstate or the agent for State Farm, and there are also people called brokers who represent a number of companies. If that is the perception the public has, I think it would be appropriate and less confusing if a similar concept was carried over into life insurance so they know that some agents represent a single company and brokers represent a number of companies.

Quebec has a very short little phrase in its insurance



act that says that a broker represents more than two companies and that none of those companies has an exclusive contract with them. That's a very simple definition. We'd be very comfortable with something like that.

Bill 134 envisions a council coming in to take over the day-to-day running of the insurance industry or the marketing of insurance. Our experience in watching other provinces with councils gives us cause for concern. The way it's proposed here appears to be much more realistic, and I am quite comfortable with the way it's proposed.

**1050**

The problem in the other provinces has been that there is very strong competition within certain marketing elements in the marketplace. To name two, I'm a broker; I compete with people who are agents who represent a single company. We obviously both believe our marketing system is good and valid and makes sense. If you have a council that is dominated by one group or the other, the council becomes an extension of the marketing arm of that element of the industry, where it either promotes one side or tries to hold back the other, which of course is not what a council is intended for. Unfortunately, that is how they have been used in other provinces.

What you're looking at in Ontario is a proposal where there will be some type of proportionate representation of the various marketing elements on the council. That is very good, and please understand that 10 years from now, when we're all buying our life insurance through modems and computers, the people who specialize in that type of marketing will now have a seat on the council. If they don't, people like me will do our damndest to stop that kind of marketing, which doesn't serve the public. The council has to remain responsive and proportionate to the way insurance is being sold.

When I say "proportionate," proportionate to my eye means proportionate to the way the insurance gets sold, not how many people it takes to do it. Three or four people in a head office in an insurance company with a big advertising campaign using fax machines and telephones might market as much insurance as 1,000 agents. It doesn't matter if it's three people versus 1,000 people; what matters is, from the public's point of view, how is insurance being sold?

There's a little plug in there, because although brokers numerically are not very strong on the ground, in terms of the amount of insurance actually changing hands we're very powerful. About half the insurance sold in this country is sold through brokers. Some companies you've probably never heard of sell more life insurance than companies such as Sun Life, which you have heard of. It's because the activity of the brokers and the advertising is not aimed at the public; it's aimed at the brokers themselves.

The final element I'd like to comment on is the issue of replacement. This is a very contentious issue in the insurance industry. It's contentious because it's a marketing fight. If I, as an agent or a broker, am replacing somebody else's policy they've sold, we're now in a marketing fight, and the regulations get dragged into it.

The way the replacement provisions work is that if I'm

going to replace your policy, I have to give you a disclosure form that explains what I'm proposing and what you now have. That may not sound ridiculous, but suppose we were saying: "I'm a banker. I'm proposing to replace your mortgage, and I'm offering you a better deal on your mortgage." Could you imagine regulations that say that the first company that arranges a mortgage for you doesn't have to tell you what your interest rate is, doesn't have to tell you what the provisions are to get out, but if somebody else comes along and says, "We have a better deal," then they now have to for the first time tell you the facts about what you've got and what they're proposing?

What we would like to see is disclosure of details of insurance when it's sold, not when it's replaced. Frankly, in a lot of cases, by the time we're around to replacement, the damage is done. You needed to know what the policy had when you bought it, not when it's being replaced; that's too late. Insurance is about the only financial instrument I know of where the seller is under no obligation to disclose the relevant facts.

There's life insurance being sold today where there is no life insurance death benefit in the policy for the first two years. That's a very relevant detail. There's no obligation to disclose that. In a lot of the insurance sold today, the premium can change in the future, at the whim of the insurance company, perhaps inversely with interest rates, perhaps inversely with mutual funds. There are policies sold where the death benefit will fluctuate with other factors. This is pretty important stuff. There's no requirement to disclose it. Is it any wonder that a couple of years later, when the person discovers that his premium is going up or the face amount's going to go down for the first time, he's unhappy and wants to replace it? Then I, for example, as the broker who is stuck with this mess, am now under a legal obligation to disclose what the first policy said.

The one who in a replacement situation should be obliged to disclose what the old policy said is the original insurance company. As the broker, I should be obliged, I submit, to tell in writing the old insurance company, "Joe Blow is considering replacing your policy with a new one." They should disclose to him what's in the new one. They know how to put it in the best possible light and presumably tell the truth about the details of the policy. Why should I try that? Sometimes I have to look at policies that are obsolete, nobody's seen them for the last 20 years, and I'm stuck with the job of trying to figure out what it is and explain it to the client. The insurance company can do that. That would best protect the consumer. The best protection to the consumer is a law that requires the details to be disclosed at the time of sale, as it is with mutual funds, as it is with loans, as it is with any other financial instrument.

That's the end of my prepared political comment.

**Mr Rice:** We're almost ready to—

**The Chair:** We've used up almost all of our time. We have about a minute for question-and-answer per caucus. That's not a lot of time, I know, but Mr Johnson, if you want to quickly make a comment or ask a question.

**Mr David Johnson:** Thank you both, president and



immediate past president, for an excellent presentation.

On the original comment about banks being involved with insurance products, and you mentioned Ireland, where the banks tend to dominate: Other than I guess the conflict of interest that you mentioned, have there been catalogued problems or infractions or difficulties that have occurred in countries where the banks do sell insurance?

**Mr Bullock:** If the training of agents were high, presumably the difficulties wouldn't arise just because it would be a bank-oriented person doing it. However, I'm talking in the context of Ontario, where the skill level of an agent need not be very high at all. If you take an ill-informed or poorly trained individual who has the ability to coerce changes in insurance, I think the opportunity for catastrophe is very high.

In a relatively short period of time, the banks in Ireland now control 40% of the insurance, from a standing stop.

**Mr David Johnson:** Is that a good thing or a bad thing? Have there been actual problems that have been documented where people have been ripped off or sold improper insurance?

**Mr Bullock:** I don't know.

**Mr David Johnson:** Thank you.

**The Chair:** Mr Bullock, did you have a comment? No? Mr Owens.

**Mr Owens:** Just because of time, I'll very quickly thank Mr Rice and Mr Bullock for their presentations. It's been a long time since I stood at your annual meeting and talked about the reforms that we see in the bill, and it's a pleasure to hear you today.

I'd like to ask Lawrie Savage from our ministry to respond to some of your specific questions around education and replacement business.

1100

**Mr Lawrie Savage:** I'll be very brief. First of all, with regard to education, we certainly agree that the standards need to be increased, and the proposals go some way in that direction. There will be two levels of examination, and level two will be quite a significantly more difficult test than currently exists. I might also just mention for the benefit of the committee members that although we agree the exam could be more challenging, at the present time only about 50% of the applicants pass the exam, so it's maybe not quite as easy as might have been suggested.

Also, very quickly on replacements, the proposals go quite a distance to require additional disclosure by agents when they're dealing with the public. There will be a code of ethics that would have a know-your-client rule and also a rule that the agent always has to act in the best interests of the client. Also, it would be contrary to engage in any misleading practice. We think those things would go some way towards dealing with the point that's being made.

The replacement form would also be in plain language and would have, boldly highlighted, a number of consumer tips that consumers should keep in mind when

policies are being replaced. We think that's quite an improvement in the present system.

**Mr Elston:** Actually, I was interested in the replacement thing as well, because that seems to be an area of contention. I've had some people talk to me about that.

Wouldn't it make good sense for a person who's trying to replace a policy to know what you're replacing so that somebody isn't disadvantaged when he or she chooses to take your policy over the other? How could you make that sale unless you had some understanding of not only what their circumstances called for, but what circumstances were met at the time with the policy, whatever it might be, that was in hand? I'm kind of confused that you wouldn't want to understand what the policy was that a person had when you were recommending perhaps that they replace it, particularly in the case where maybe there was some feature that made the policy cheaper that ultimately had passed and there was perhaps full coverage for life, let's say after the two years—the problem with having been misled actually having been overcome by time, for instance.

Don't you know the policy or have a general idea of the policy you're replacing? I know that people who try to replace my policies want to see the one I've got.

**Mr Bullock:** Yes. When I'm in a situation where I'm telling you that what you have isn't very good and there's something else that's better, I obviously believe I have a good grasp of what you have. What I'm concerned about is who has the legal onus to give you the final opinion as to what your policy says. Right now it's me. I'm saying that you would be better served if I simply told your company, "We're looking at replacing your policy," and it prepared a simple disclosure form that told you what your premium was, what your future benefits were etc.

Obviously, in order for me to transact business, I'm going to have to make you a presentation. If I'm right, they will simply confirm what I told you. If I'm wrong, you have an opportunity to get it from the horse's mouth, so that when I said, "Your premium is going to go up," and the company sends you its copy of the form and says, "It's not going to go up," you realize I was all wet. Right now, the onus is all on me to talk about somebody else's policy. That isn't fair to me and it certainly isn't fair to you.

**Mr Elston:** But isn't it a material representation that you're making to me that you're replacing a product that is inferior to the one you're giving me? Shouldn't you be held responsible for making that as an allegation, with respect? I don't see how you can get away from having an obligation to go into the background policy, particularly in replacements.

I agree with you, in fact. When somebody says, "You need a policy," and in plain language, "This is what I'm giving you: I'm giving you \$10,000 worth of whole life" or "I'm giving you this coverage for accident and health benefits," I agree fully with that. But on the replacement, it has got to be a material representation in terms of urging me to change my policies, it seems, which is a holding out that you know what I've already got. I don't see how you would want to or how you could allow somebody to escape the obligation.



**Mr Bullock:** I'm not proposing they should. I could not sell you a replacement situation without explaining what you have and what I'm proposing. What I'm talking about is the ability for you to be sure I've got it right. The way for you to be sure I've got it right is for your own company to provide you the other half of the apples-to-apples comparison.

The law, as I envision it, would require me to disclose in a simple, standard format the premium, the future benefits etc, and your own company to provide a similar document for your existing policy in addition to the one they gave you, ideally, when you bought it, which right now is not the case.

If, for example, Mr Savage discovers that I am routinely telling people it's A, and in fact when the insurance company comes through with its copy, it's B, either I'm incompetent or I'm misrepresenting. Right now, I have to fill in both sides. It's unfair to ask the Chevy salesman to try to explain how the Ford worked. Let Ford do it.

**The Chair:** Our time has expired. I want to thank Mr Rice and Mr Bullock for making their presentation before the committee this morning.

CANADA TRUST  
NATIONAL TRUST  
HOUSEHOLD TRUST

**The Chair:** The next presenter this morning is Mr Tom Gunn, representing Canada Trust, National Trust and Household Trust. Please come forward, make yourself comfortable, and whenever you're ready, you may proceed.

**Mr Tom Gunn:** I have a short presentation to make this morning on behalf of Canada Trust, Household Trust and National Trust, which are three companies which some time ago formed a private group to work with the ministry for changes in financial legislation.

To elaborate a little bit on the background, Canada Trust is the largest trust company in Canada, with over \$150 billion in assets. It is not a member of the trust companies association. While Canada Trust shares some interest with the association, it does differ in some aspects. Household Trust and National Trust are members of the association.

Personally, I am the former chief financial officer of Canada Trust and am now a consultant in the industry. For over a year, Canada Trust, Household and National Trust have been working together on legislation.

Earlier this morning, Mr John Evans, the president of the Trust Companies Association of Canada, gave his remarks. Many of the remarks I will be making this morning are very similar, so I will keep my comments very brief.

Firstly, I would like to point out that both credit unions and trusts offer many of the same services to people in Ontario. Both credit unions and trust companies are deposit-taking institutions and have certain prescribed lending powers. While the structure of credit unions is very different, many of the rules governing the business conducted by credit unions could just as easily apply to trust companies.

Another reason why trust companies are interested in the regulatory regime for credit unions is competition. Since all deposit-taking institutions are regulated in some fashion, the type of regulations and power we have do in fact dictate how, when, and what advantage we have relative to each other and to the banks, as well as to other institutions operating in Canada from abroad.

Let me point out something which all the parties in Ontario have recognized. That is that the regulatory burden on the financial services industry, just as much as any other industry, can impose some very significant costs. We are always looking for ways these costs of regulations can be minimized without compromising consumer or depositor protection. Let me say that I really do believe the credit union act has the potential to achieve that balance.

Another reason why the group is here is the process that preceded the introduction of Bill 134. In December 1992, the government launched a major review of financial services legislation governing all aspects of trust, credit union and insurance companies, and that review really was badly needed. Discussion papers were published as part of the exercise and each sector of the financial services community was invited to participate and comment on all or any parts of financial services reform. We very much appreciated this opportunity, since what happens in one part of the industry does have a very major impact on the others.

Consultations were detailed and were carried out with due confidentiality where required. That did enable our three companies to provide technical expertise and comments on the draft legislation, and we hope this has made for stronger legislation. In short, the process was very thorough and inclusive, and we see this appearance as part of the continuing process of consultation.

Over the last few years the financial services sector has changed very dramatically. It's become much harder to distinguish between the four pillars, especially as some new pillars seem to have evolved. Both personal and commercial customers are looking for a much broader range of products and services regardless of where they deal. Financial institutions are now involved in multiple businesses, all of which need appropriate and modern powers described in legislation. In addition, the sector does require modern regulatory provisions. Again, it's a question of both law and regulation having to come together.

#### 1110

In the past few years, federal legislation did receive a comprehensive review, and the provinces are now catching up. Until the federal government updated its legislation, the provinces were significantly ahead, and Ontario was the leader in this move. But what is very clear now in the current economic and business environment is to have flexible legislation for all sectors of the industry. By "flexible" I would not mean loose; flexible to the extent that one can take advantage of a rapidly changing economic environment appropriately and not be constrained by rules which are designed to apply to an entirely different economic or business environment.

The staff and legislative counsel have done an excel-



lent job in drafting this legislation. I think I made the point to a couple of the drafters personally, because I do like the language in this. It's very clear and it's very effective. I think it represents some good progress on the province's part. This is certainly very hard to do, and it's very important to those of us who have to live by the letter of legislation that it is clear. A great deal of credit is due to the staff efforts in this area. I personally appreciate their efforts and think they should be recognized.

Wise choices have been made between putting principles in legislation and rules in regulation. With a rapidly changing marketplace and economy and new products and services constantly being developed, the government is in a much better position to respond to changes quickly through regulation and to deal with actual problems as they occur.

Financial regulatory regimes are certainly not the first thing that comes to mind when we're trying to interest an electorate in a government's record of accomplishments. While this is perfectly understandable, it ultimately can mean that the industry rarely has an opportunity to update its legislation when that is required. Nor, just as importantly, does the government have an opportunity to develop new rules to handle new realities in the consumer and economic interest. The balance that has been struck in this legislation is just the sort of balance we'd like to see in trust company legislation.

One of the things we are most pleased to see in the credit union legislation is the change to a prudent portfolio approach with regard to investment powers. In principle, this means investing in a prudent way rather than a strictly prescribed way or an eligible list of investment methods that hitherto was on the books. It is very clear in the act that this doesn't mean people are free to do what they wish. There's a very clear set of sections in the act which does define liability if one does not act in a prudent manner. This change is good news for the economy because credit unions should theoretically be freer to invest in new projects.

We use the terms "principle" and "theoretically" quite deliberately to make another point that is very important both to the trust companies and to the credit unions, and that is the regulations which will accompany this. As is often said in our business, it's the details that make all the difference, and no one would like to see that the powers have been expanded in law and immediately taken away by regulation. That would not serve anyone.

To touch very briefly on the changes in the budget proposed to trust and loan legislation, it was always understood that as part of the process, the credit union and *caisse populaire* would be the first to see legislative changes. As many of you know, our three companies have been working hard to ensure that changes in our own legislation are next. We were extremely pleased to see that some of the proposals did appear in the recent budget as part of the government's strategy for helping the private sector consumers contribute to full economic recovery.

While this legislation has yet to be introduced, some of the principles set out in budget paper A do look very similar to the changes that were proposed for the credit

unions. For instance, trusts will soon be able to adopt a prudent portfolio approach to investments, to issue letters of credit, which has been a very serious point of contention, and have no restrictions on the denomination of subordinated debt. While it might seem to be a small point, it actually is a very important access-to-capital issue. These are all changes that both credit unions and trusts have been asking for for many years and we're all delighted to see that they are being made.

I do want to say, however, that trusts will not have the advantage the credit unions have had in terms of a comprehensive review of legislation. I think a couple of the other points that would have been in a comprehensive review were mentioned by Mr Evans.

Harmonizing rules for related party transactions to permit reasonable transactions that present no risk to depositors and fundamental disentanglement for companies that are subject to duplicate regulation at the federal and provincial levels must follow before trust legislation is truly and thoroughly updated. The industry and the individual companies will continue to press for changes in this in the weeks and months ahead.

If I may add just one other cautionary note at the end, the changes signalled for our industry in the budget have not yet appeared in legislation and in regulations. We would all want to watch very closely just to see how these principles are actually set out and enacted in regulation.

That is the end of my prepared remarks. I will be pleased to answer any questions you have.

**The Chair:** Thank you. We have five minutes per caucus.

**Mr Owens:** Very briefly, I'd like to thank you, Mr Gunn, for your presentation. It's very concise and I appreciate your support.

On page 3 of your presentation, part V, you say that financial regulatory regimes are not the first thing that comes to mind when one is talking about the government's record of accomplishments. I do have some sympathy with that statement. It's been my experience as an observer, watching when something does happen in the field of financial services with respect to a failure, that the first question asked by depositors is, "Okay, so where's the government, what kind of regulations does it have in place and what can we do to ensure our deposits are safe?"

I appreciate the kind of work your group and others within the trust community have done with the government with respect to this issue, representatives like Ann Creighton, who have made your point clearly and concisely in working with our ministry representatives.

**Mr Elston:** What company is she with? Let's get the rest of the advertisement out.

**Mr Owens:** Anyway, I'd just like to thank you again for your comments.

At the risk of becoming repetitive, in terms of the financial services review, it's our commitment that we're going to continue along with our plans with respect to the loan and trust review.

**Mr Gunn:** Thank you, Mr Owens. I'm sure all the



members of the industry would be very happy to know that.

**Mr Elston:** Tom, any advice with respect to 134? You'd like to see it go as is, quickly, I presume, so we can get on to the next bill.

**Mr Gunn:** Yes. The comments Mr Evans raised this morning about subsidiaries for trust powers I think is something that could be handled in regulation rather than legislation. Certainly as a matter of principle there are no changes which we would suggest would need to be made from the standpoint of the three companies I'm representing today.

**Mr Elston:** Since we don't have a lot of material to talk about in the text of the bill, can you give me a little bit of a view? You represent Canada Trust, National Trust and Household Trust here, I guess as their combined agent or maybe as a new CEO for the entire new amalgamation or something, for all we know. What are the future prospects for trust companies in the financial market, just from the standpoint of some vision? I think that's important for us with regard to what really the even playing fields are.

**Mr Gunn:** Certainly, Mr Elston. I must comment first on the remark you made as to my role here today. I may well appear back in this committee in some other role. You may well think so; I couldn't possibly comment at this time.

First, with regard to the role of trust companies, it's not so much the actual type of legislation or name of the company as much as the powers that are extended and the quality of service that is offered by institutions. There is nothing detrimental in the term "trust company" that caused the failures of the industry. In actual fact, it had more to do with legislation being obsolete at both the federal and provincial levels.

Just touching for a moment on the nature of the length of time it takes to make changes, when the federal act was updated, the core legislation dated back to the 1920s, and business problems which were current in the 1920s were definitely not present in the 1980s and 1990s.

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A number of the problems in the trust industry came about by people trying to bend existing legislation, being very frustrated with the lack of progress. With updated legislation, I think you would actually see fewer problems. One of the things that certainly happens at all companies these days is that directors and officers are much more aware of issues of corporate governance and are less inclined to look to bend rules. If powers are clearer and the ability to expand into new areas is plainer, people will in fact engage in less risky transactions because there is more opportunity and clearer opportunity to engage in better-quality transactions.

I think the industry will survive. There is a role for smaller companies in Canada and elsewhere. Indeed, some of the smaller financial institutions around the world, not necessarily the largest, are the most prosperous.

**Mr Elston:** Perhaps we should bank on seeing you back here on some occasion in the future. With regard to

the rules for affiliates and other things you see in your industry, would you have any problem if there was a different rule to be applied to affiliates of credit unions, for instance? There are some reservations about how the treatment of an affiliate to a credit union might make their world work. I'm just wondering if you had any observations on difficulties you might spot in that regard.

**Mr Gunn:** One of the underlying issues that still exists with all institutions, with credit unions as much as anyone else, is the issue of management quality. If an organization is not well run, it will not prosper. The act will neither prevent their failure nor ensure success. If companies are well managed and can adopt proper business standards, they will prosper.

I know there is some concern expressed that there seems to be an opening in Bill 134 to allow a tight set of rules for credit unions. While this may be thought to be appropriate, that may be letting them off one leash but back on another, and I think that should be looked at very carefully before it's done.

Imposing tight rules can rebound in ways that one would never expect. For instance, a rule in trust legislation, thought to be well founded at the time, with regard to the replacement of the so-called basket clause, requiring a company to pay dividends before a trust company could invest in it, by a standard that said all companies must be in business for five years was not intended to inhibit the growth of small firms, companies in the technology business in areas like Kitchener, where technology companies abound, yet it had that effect.

One has to be careful of imposing a standard in one environment that just doesn't work in the future. To that extent, that is what is meant by flexible legislation and flexible regulation.

**Mr Elston:** Just one final comment: The real problem in looking at having legislation is that if you are an aggressive management—and we have seen examples of that in the trust business. Some of those people, now not being in the trust business, see the act and have seen the act, even in its previous incarnations, as being far too difficult to deal with even though it had some flexibility built into it. It's almost impossible to make the legislation flexible enough for at least some management teams, and there's always going to be an internal debate, it seems to me, and some of the debate was led by representatives of at least one of the firms you are here today representing. And even on the other side of that might be one of the other firms you are also representing today.

To look to the legislation to be both flexible and stable enough to prevent risky investment becomes a very difficult job for the regulators; in fact, almost an impossible world for them to hold with any degree of certainty.

**Mr Gunn:** You're quite right, if one perceives flexibility as meaning risk, but it need not do so. Flexibility can actually mean ability to make use of current legal drafting language to adapt to new types of securities and new types of business that are available, rather than if you stick in the commercial mortgage field.

**Mr David Johnson:** I'd also like to thank you, and just ask you perhaps a very naïve question: Why does it



take so long to update legislation? Is there a lack of consensus in the industry or is it other political priorities? Maybe it's a political question I'm asking you, I don't know, but you say the federal legislation hasn't been updated since 1920.

**Mr Gunn:** When the federal reform was passed, it had taken virtually 70 years to get done; you're quite correct. It is a political question, but it's one which all parties have shared. All governments face the issue of priorities and of allocating needs to meet economic development processes. Reform of financial legislation doesn't readily appear to be something that ties to economic development until you work through the consequences of restraining companies by old legislation, and slowly but surely recognizing that the restraints drive the companies to lend in fields which can be totally counterproductive to economic development.

For instance, at the federal government level there was a thrust, and for that matter in Ontario as well, to ensure that there was adequate money available for mortgage lending in Ontario and elsewhere across Canada, particularly after the Second World War. That is still the regime we're in 50 years later. I think we'd all agree that Canada is much better housed than it was, yet the trust industry at both federal and provincial levels was being encouraged and compelled, virtually, to stay in the housing finance business. We all look at what has happened when money is pushed out the door, so to speak, in commercial developments. It isn't prudent, yet it was one of few outlets for money those companies had.

There are other things that are of higher government priority, reform in other sectors, that have taken precedence, and it simply takes long effort to make it well known that reform is required. That applies to Ontario, to British Columbia, to Quebec and to the federal government as well.

**Mr David Johnson:** On page 1 of your brief, you talk about the regulatory burden on the financial services industry, and perhaps that's in the vein you've just been talking to us about at this point. Now my colleague Gary Carr has been on a task force attempting to address regulatory burden, not only on the financial industry but on our total industry and business across Ontario. Are there any other specifics you would like to note in terms of current regulatory burdens on the industry?

**Mr Gunn:** Yes, there are, and this gets back again to a point raised by Mr Evans this morning, and that is the issue of harmonization of designated jurisdiction and overlapping regulation. There is an opportunity now for most of the Ontario Loan and Trust Corporations Act to look very close to the federal act. On the other hand, it's not quite identical.

There are two very close sets of rules that still exist with regard to related-party transactions, which also can have unusual economic consequences that people wouldn't think, and other sectors as well. It's been characterized as everyone agreeing that proper constraints need to be visible with regard to related-party transactions and that all corporations in effect recognize they must be seen to be acting properly.

However, two not identical sets of rules are a real

burden. They can block activity. They can actually block the purchasing of equipment in Ontario from Ontario manufacturers because it becomes almost insurmountable to figure out how to do it.

There is a need to harmonize. Frankly, I don't think the country is well served by there being separate regulatory powers in the same field at different levels. It is costly. It creates no end of effort to determine how a transaction must be done; in fact, transactions which, I don't think anyone here would disagree, create economic benefit and are no risk to depositors at all. There is a need for reform of that sector.

One of the things Canada Trust has advocated for some time is that federal trust companies should perhaps be exempt from that role and just governed by federal regulation. National Trust, on one hand, has no problem with Canada Trust and Household being that way, but has no desire not to have comparable powers as well. It is something that all three companies want to work more with this Legislature on, just to see if there is a way out of this.

1130

**Mr David Johnson:** I wasn't sure quite what the bottom line was: that the solution is that the federal rules only should apply, or that somehow the provincial and federal rules should be brought together, harmonized?

**Mr Gunn:** There are two concepts. One is called designated jurisdiction, that a company which is regulated by one province should just be regulated by that province in its area of operation; that is to say, Ontario would only regulate the Ontario operations of Ontario companies, and the federal government would regulate the operations of federal companies. There is no net economic benefit to be gained by having two regimes.

**The Chair:** We have two minutes left. Ms Haslam, you indicated you had a question. Two minutes.

**Mrs Karen Haslam (Perth):** He says two minutes because he knows how I like to talk about things.

I was very interested in a couple of things. First of all, it would be really foolish of me not to mention that Rowland Fleming is the president of National Trust, whose head office is in Stratford, Ontario, which is where I come from. Now that I have mentioned that, I'll go on to what I really want to talk about.

I like what you were saying in your presentation, two things that I thought were really nice and may even use as quotes. One was that you said how very pleased you were to see the changes to your own legislation outlined in the recent budget. It's nice to see the financial community say those kinds of things about a budget. Second, on page 2, you said, talking about the consultation process, "In short, the process was thorough and inclusive, and we see this appearance as part of that continuing process of consultation." Again I'm glad to see that, because it's something this government has tried very hard to do: get involved in consultation in a lot of pieces of legislation.

The interesting thing I want to ask you about is that you mentioned the flexibility of legislation versus regulations. That surprises me, because I've just come off the



social development committee where we looked at legislation around tobacco, and time and time again we heard members say: "But it's not in the legislation. Why are we leaving it for regulations?" Now you've come forward and talked about responding to changes quickly through regulations and not enshrining it and putting it in stone in legislation, talking about the flexibility of legislation versus regulations.

Is it just in this particular sector in which you think that would work, or do you see that as being something we could look at in all pieces of legislation? I am a process person, and that's why I wanted to know.

**Mr Gunn:** From a theoretical standpoint, the position the trust companies are taking comes from many years of working with a tight set of rules. In addition, one of the other features that happens within this industry is that the companies have the experience of seeing many sets of rules from many jurisdictions.

In Canada and abroad—in the United States and in Europe—Canada Trust and National Trust are indirectly regulated through the Basel accord, an international banking agreement made by the central bankers of several countries. From this, the industry has come to the conclusion that while people can be quite comfortable with the situation being in stone, it is a better arrangement, if it can be worked through, to move details from legislation into regulation, that it can work. In theory, in any case, it appears to work effectively elsewhere in the world on financial services. Potentially it could work well in other sectors.

**The Chair:** Thank you, Mr Gunn, for making a presentation before the committee this morning.

#### INVESTMENT DEALERS ASSOCIATION OF CANADA

**The Chair:** The next presentation this morning is by the Investment Dealers Association of Canada, Mr Donald W. Grant, vice-president. I remind you that you may use all the time allotted to you for your presentation, or you may want to save some for questions and answers.

**Mr Donald Grant:** I'll be mercifully short and will provide you an opportunity, I hope, for some questions.

The Investment Dealers Association very much appreciates the opportunity to appear today before your committee as it reviews Bill 134. As you are no doubt aware, our interest in Bill 134 is aimed primarily at a tag-along section of the legislation that was added on, not part of the credit union and caisse populaire legislation. It deals with the definition and recognition of self-regulatory organizations.

From a background perspective, the North American and indeed British approach to securities regulation is not one of direct government regulation, such as exists today with the banking system in Canada, nor is it, of course, purely self-regulation. It is rather a cooperative regulatory system, which is a close and necessarily interdependent relationship between, in this case, the Ontario Securities Commission and, on the other side, the IDA and the Toronto Stock Exchange in Ontario.

The IDA is the national self-regulatory association for the securities industry. It's not particularly large. We have about 100 investment dealers in our membership and

about 20,000 employees across Canada. Sixty-seven of those 100 members are head-officed here, and 10,000 of the 20,000 employees are here, so the presence is quite strong in this province. We carry out our activities through district councils in all provinces of Canada, and we operate out of branches, with the head office in Toronto and branch offices in Calgary, Montreal and Vancouver.

The association's mission is one we don't take lightly. It is to foster efficient capital markets by encouraging participation in the savings and investment process and, most important, by ensuring the integrity of the marketplace. Absolutely everything we do at the association is driven by these goals. Efficient capital markets are critical to all Canadians because they channel our savings into productive investment, providing the financing for new plants, new equipment, new technologies and other business ventures upon which our jobs and our incomes depend.

Broad participation in the capital market is important, then, to the efficiency, depth and the liquidity of our markets, and public confidence obviously is a key to having that participation as broad as possible. How do you foster public confidence? It's through a regulatory environment that ensures timely disclosure and full dissemination of information to investors and establishes proper and fair rules of business conduct. Public confidence is also generated by a recognition of the financial stability of the participants in the marketplace. Effective regulation is therefore critical to both financial stability and to a broad public participation.

A visible, safe and comprehensive regulatory regime is necessary to build and maintain that investor confidence. Unlike some of the predecessors here that I heard this morning, we believe the Ontario regime, through the Ontario Securities Commission, for regulating securities in this province is indeed a fine machine, working very well and in the interests of investors in Ontario. It's widely accepted that the self-regulatory system is second to none in terms of comprehensive securities regulation and investor protection.

You try not to use these acronyms or these initials, because I'm sure the level of understanding isn't high for at least some of you, but the SRO concept in our industry is very simply that the four stock exchanges and the IDA comprise the SRO system in Canada. It all comes under the regulatory umbrella of the Canadian investor protection fund, which up until several years ago was known as the national contingency fund.

Provincial securities commissions rely upon the SROs to carry out a wide range of responsibilities for ensuring that their members maintain sufficient capital and adhere to strict rules of professional conduct. The SROs discharge this important responsibility by prescribing comprehensive safeguards designed to ensure the solvency of their members, including audit procedures, minimum recordkeeping requirements, financial reporting and disclosure rules, margin rules, and minimum net-free capital and insurance requirements, all of which, I must point out, are much higher standards than those that are prescribed by government legislation for direct regulation



undertaken in other areas. These responsibilities of the SROs are conducted under the general oversight of provincial securities commissions, and disciplinary actions taken by the SROs are reviewed by the commissions.

1140

You might ask, why would we have a self-regulatory system at all? There are a number of advantages over direct government regulation. First, I would point out that self-regulation has been demonstrated to be an efficient and cost-effective system of regulation. It relieves the strain on the already overtaxed resources of government, permitting government to focus on strategic policy issues and not direct business activity.

Under the SRO system, the securities industry, not the taxpayer, bears virtually all of the cost of the ongoing regulation of licensed investment dealers and stock-brokers. Those two categories of registration by Ontario securities legislation are required to have mandatory membership in the IDA and the Toronto Stock Exchange, respectively.

Second, the combination of knowledgeable industry representatives and professional staff working together is critical to our process. Trained industry personnel have an expertise in developing effective rules and regulatory procedures that you won't normally find at the government bureaucratic level. Professional staff supervise the conduct of industry participants, identify potential problems and infractions at an early stage and devise prompt, workable solutions.

Finally, the combination of industry and public disciplinary tribunals judge and hand down disciplinary decisions to those who break the rules.

As an addendum, our tribunals are three-person tribunals, made up of two industry people from the particular district involved in the allegations, and the third is a person selected from the public who has some legal background, such as a retired judge or a law professor or whatever. That person, the public person, chairs that panel.

Third, self-regulation permits a higher degree of investor protection, as the securities industry is able to establish and enforce standards of business conduct at levels above those which, I think you will understand, governments can practically prescribe.

The fact that a loss caused by the insolvency of a member firm is borne directly by the securities industry itself—there is no government subsidization—is a substantial incentive for the self-regulatory system to ensure both that the standards are high and that the rules are enforced strictly. Further, losses go beyond financial loss to a reputational loss, which is of paramount importance in the financial services industry, which is indeed based on trust relationships.

The IDA believes the system of cooperative regulation between the governments and the SROs is essential to maintain and improve the integrity of the marketplace and ensure that public trust is not jeopardized.

Government oversight of an SRO is a critical element of this system. There are four methods through which the direct government regulator exercises substantial control:

(1) government power to grant or remove recognition as an SRO—the reason I'm here today;

(2) government review of SRO rules;

(3) government monitoring via reporting requirements and ongoing communication of the SRO's practices and procedures;

(4) government hears appeals from decisions made by the SRO.

While the Ontario Securities Act provides the OSC with the power to recognize stock exchanges, as it has the Toronto Stock Exchange, it does not currently provide the commission with the explicit power to recognize self-regulatory organizations other than exchanges. There are some areas of the act that permit limited recognition in areas of appointment of auditors, financial review and things like that, but it does not allow for the delegation of responsibilities, as it does with the Toronto Stock Exchange. Accordingly, the IDA cannot be fully recognized under the act.

Notwithstanding that, the IDA for many years, certainly for as long as I can remember and probably known to many people here at the table, has been carrying out activities in Ontario as an SRO. Indeed, we've done this with encouragement from the OSC, which in 1987 wrote a letter to the IDA requesting that we conduct ourselves as though we were SROs and as though we were formally subject to commission oversight, and that we establish regular lines of reporting and communication with the commission, lines of communication and reporting that we really had in place many years before the request. The IDA submits its rules to commission review and approval and is prepared to abandon or alter practices which the commission opposes, and we do in fact do that.

The IDA functions in six of Canada's provinces where there is as yet no statutory recognition. On the other hand, we operate in British Columbia fully recognized under statute, and there are provisions in Alberta, Nova Scotia and Quebec for such recognition.

However, we haven't yet gone through with our efforts for recognition in those three provinces, pending developments right now in an initiative to change the framework under which we operate in Canada. You'll see reference to that below and also in an exhibit I have attached to the submission.

The Investment Dealers Association of Canada could normally have been expected to continue operating as an SRO in the various Canadian provinces either through statutory recognition or by informal agreements or formal agreements such as we have with the Ontario Securities Commission. However, three developments have threatened our continued ability to discharge our regulatory responsibilities and effectively have made recognition of the SROs very critical to our continued operation in Ontario.

First is the imminent conclusion of the negotiations on the restructuring of the SRO member regulation function that I referred to earlier and that is explained further in exhibit A.

The second is the recent lawsuit by Cantor Fitzgerald against the OSC and the IDA, which questioned the



commission's authority to approve our bylaws and thus for the commission to rely on us as an SRO.

Finally, there have been court challenges to the OSC's jurisdiction, including the Ontario Court of Justice decision in favour of the penny brokers in respect of OSC policy 1.10. This makes it clear that there must be a sound legislative basis for the OSC's delegation of regulatory powers to the IDA, such as currently exists for the TSE.

If the association is to continue to be an effective SRO, the authority under which it regulates, the standards which it seeks to impose and the rules which it seeks to enforce must be beyond question.

Accordingly, we urge this committee to endorse quick passage of Bill 134 in order not to jeopardize the IDA's ability to continue carrying out its comprehensive system of securities regulation and investor protection under the oversight of the Ontario Securities Commission.

That concludes my remarks. I will say again that I am very happy you invited us to attend here. We're grateful for that and for Ms Mellor's yeoman work in rearranging and juggling schedules that we might appear.

1150

**Mr Monte Kwinter (Wilson Heights):** You'll have to pardon me. I've got laryngitis.

I have no problem with the IDA being involved in an SRO, but I do have a couple of concerns. I'm sure you know I was the minister responsible for bringing in the loan and trust act in 1988. One of the things I noted at the time was that Ontario was the leader in that particular initiative. The province of New Brunswick adopted our act in total, including the typos. In Alberta, the minister at the time said it was ridiculous that we would bring this in, that it wasn't necessary, that they had the situation in Alberta well in hand and everything was fine. Of course, British Columbia had its own ideas, and we all know the reputation that particular exchange has.

The concern I have is a statement you make on page 3 that "self-regulation permits a higher degree of investor protection, as the securities industry is able to establish and enforce standards of business conduct at levels above those which governments can practically prescribe."

I have no problem with the enforcement standards; it probably would be more efficacious to have you do it. But I don't think you could do the establishment of the regulations better, because of the overview the government has. The problem I think the industry would have is that it would look at what the industry was doing and try to make it such a level of regulation to make sure that most of the people in the industry could comply. But if the government were to establish those regulations, it could take a look at exactly what their function is, which is consumer protection and investor protection, and then delegate it in conjunction with a cooperative self-regulation, as you've prescribed, that the IDA and the securities commissions would take the on-line responsibility of supervising and enforcing all of those regulations.

My only quibble is whether you feel that you are the ones who should be setting the regulations.

**Mr Grant:** Maybe I could deal with this on two

levels. The first is that what you're not challenging is our ability to enforce something uniformly across the country. I think you're saying we may not be able to prescribe rules of as high a standard as the direct government regulator, in this case the government of Ontario, could do.

I find that very puzzling, because the system I describe of cooperative regulation indeed has the checks and balances that the government needs so that we wouldn't develop any legislation that is contrary to the public interest. That's number one.

Number two, because it is a combination of industry expertise and professional staff, I can't imagine how the government would have the expertise that could come close to establishing the high levels of regulation that are needed.

**Mr David Johnson:** Thank you very much for your presentation. I must say, in terms of the concept of self-regulation I agree 100% with what you're saying. The taxpayers are overburdened as it is, and you mentioned that. And the industry has the kind of expertise and knowledge, I'm sure you're entirely correct, that the government couldn't hope to have, and the cost, if the government were to have that, would be enormous. So I agree with the concept.

I suppose the bottom line here is that you're very happy with the legislation as it stands today, and would like to proceed.

As I'm not terribly knowledgeable about the issues the IDA deals with today, could you tell me a little about the volume of the issues, without mentioning specific names, the problems or complaints you deal with? Is the IDA proactive, or are complaints brought to it in terms of action?

**Mr Grant:** That's a good question. I do appreciate your endorsement of self-regulation. It really begs the question of why there aren't more cooperative regulatory schemes in Ontario, not fewer. The systems the SROs have in terms of securities regulation are both reactive and proactive. I won't go into the reactive, because you asked me for the proactive.

The proactive probably takes its shape in a number of areas.

(1) There is a comprehensive early warning system that is set up, comprised of monthly, weekly and annual financial and operational reports from member firms to assist in detecting problems so that prompt remedial action can be taken. There may be just too many of these reports that people do, but they have to do with inventories, finances, operations, margin rules, concentration rules. These reports are filed on an ongoing basis. That's number one.

(2) There are periodic surprise visits by our audit and examination staffs to the offices of member firms that we must conduct under the rules of the Canadian investor protection fund once every year. Those periodic visits, by the way, are part of about a 15-part program that covers all aspects of the firm's underwriting operations, research, trading, retail sales. But one thing it does is cover those reports I mentioned to you in the first instance, to ensure that the information that's being presented to us in our



early warning system is good, viable information we can have some assurance about.

(3) There's one surprise audited financial questionnaire every year. Somebody said, "Financial statements on a surprise basis, that isn't too bad." But this is about a 25-page document that takes about, in some of the larger firms, 200 man-hours to prepare—very costly, very informative, in surprising detail.

(4) These firms also get an annual external audit. Part of our audit program is to go in every year and review the external audit working papers to ensure that the audit is being carried out in conformity with our prescribed minimum audit requirements for external audits. Some of the other preventive measures are requirements that all the customers are fully paid, and that excess margin securities must be segregated and kept apart from all the other operations of the firm, and reported upon, in that first instance I gave you.

(5) There's a lot of capital liquidity and insurance requirements that are very preventive in nature.

That's about it, what I can think of offhand.

**Mr Owens:** Thank you for your presentation. I would like to have Joan Smart from the OSC respond to one of your concerns.

**Ms Joan Smart:** I just wanted to add something in response to the question from Mr Kwinter. Under the cooperative system of regulation, the government can make rules and have them enforced by an SRO. Similarly, the OSC can go to the SRO and make requests that it put in place a bylaw.

If you look at subsection 21.1(4): "The commission may, if it's satisfied that to do so would be in the public interest, make any decision with respect to any bylaw, rule etc of an SRO." That's intended to include the ability of the commission to go to the SRO and say, "We think you should be putting in place a bylaw to deal with this problem that's come to our attention." I think that responds a bit more to Mr Kwinter's question.

**The Chair:** Ms Haslam, we have about a minute.

**Mrs Haslam:** It's getting less and less time, isn't it?

I was very interested in your mission statement, especially "Efficient capital markets are critical to all Canadians because they channel our savings into productive investment providing the financing for new plants, new equipment, new technologies and other business ventures upon which our jobs and incomes depend." That was a very interesting comment in your mission statement. Since you had so much detail about what you do, I thought I'd throw in a little about your mission statement too.

However, I'd like to make a quick comment. You came to the government some months back stating the importance of giving the Securities Commission the ability to recognize the IDA as an SRO. For a government which has been accused of failure to understand and respond to businesses, the quick response time by my government would seem to contradict this. Would you agree with that?

**Mr Grant:** I would agree, definitely. Of course, though, I mentioned the three items that provided an

additional sense of urgency, and I commend your government for the way it responded to that urgency.

**The Chair:** Thank you, Mr Grant, for making your presentation before the committee this morning.

This committee is recessed until 3:30 pm in room 151.

*The committee recessed from 1201 to 1535.*

#### ONTARIO MUTUAL INSURANCE ASSOCIATION

**The Chair:** The standing committee on finance and economic affairs will come to order. We're considering Bill 134 and we continue with witnesses this afternoon.

Our first presenters are the Ontario Mutual Insurance Association. Would you please identify yourselves for the purposes of Hansard and the committee members, and whenever you're ready you may proceed. I'll remind you that you have half an hour and you may want to leave some time for questions and answers at the end. Please proceed.

**Mr Norman Gill:** Ladies and gentlemen, my name is Norman Gill and I am chairman of the Ontario Mutual Insurance Association's financial services committee.

We appreciate the opportunity to speak to you about the amendments to Bill 134, which are very important to the future of Ontario mutual insurance companies.

Also taking part in the presentation today are Glen Johnson, president of OMIA; Ed Pellow, who is the manager of South Easthope Mutual in Tavistock and is also past president of the Farm Mutual Reinsurance Plan Inc; and Catherine MacLellan, the business consultant who has worked with us on this project over the last few years.

Glen Johnson will present our brief. We look forward to your questions and comments.

**Mr Glen Johnson:** The Ontario Mutual Insurance Association is comprised of 51 purely mutual insurance companies in Ontario, often referred to as the farm mutuals. The purpose of our presentation is to support amendments to Bill 134 which would result in a few key changes to the Ontario Insurance Act which our members require to compete effectively in a changing financial services marketplace.

There are 51 provincially registered farm mutuals in Ontario. All of these companies are members of the Ontario Mutual Insurance Association. Most have been in operation for over 100 years. They operate strictly in Ontario.

All policies of the farm mutual companies are participating policies, meaning that each policyholder has the right to vote at general meetings. These companies are guided by boards of directors elected from among the policyholders. Directors are typically farmers and small business operators from the community.

The farm mutuals provide a broad range of property and casualty insurance to their owning policyholders, including farm, residential, auto, commercial and farm accident protection. Through a unique ownership structure, they can match the service of almost any other property and casualty insurance company.

The individual companies range in size from assets of \$360,000 to over \$50 million. Collectively, these com-



panies have \$530 million in total assets. Total collective policyholder surplus stands at over \$320 million. Premium income for 1993 was \$209 million. Few insurance organizations would compare to the financial stability of Ontario's farm mutual system.

While there is healthy competition between neighbouring farm mutuals, there is a strong spirit of cooperation across the province. By working together, these small community-oriented insurers have expanded their service area to most lines of property and casualty insurance. For 1992, they collectively ranked 11th in Ontario for premium volume for all lines, fourth for property insurance and 16th for automobile insurance.

In 1959, the farm mutuals formed their own reinsurance company, Farm Mutual Reinsurance Plan Inc. This was one of the first Canadian-owned reinsurers and today is one of a very few Canadian-owned reinsurance companies in operation. All farm mutuals reinsure exclusively with FMRP. This company has grown to assets of \$138 million and unappropriated surplus of over \$40 million. From time to time FMRP refunds surplus to its members.

In 1975, the farm mutuals formed their own guarantee fund, the fire mutuals guarantee fund. Through this guarantee fund, all of the \$320 million of surplus within the farm mutual system stands behind any one company. This provides protection to the owning policyholders for any outstanding claims in the event of financial difficulty. However, there has never been a failure of a member of the fire mutuals guarantee fund. Ontario's farm mutuals are cognizant of their reputation as mutuals. In a few cases, prior to the existence of the fire mutuals guarantee fund, the Ontario farm mutual system went to the aid of policyholders of mutual companies which had encountered financial difficulty on a gratuitous basis.

It is through this spirit of cooperation that the Ontario farm mutuals hope to address the new challenges of the changing financial services marketplace. We have developed a strong market niche in communities throughout the province. Now, while we are strong, we must plan for the future. We operate strictly in Ontario and must have the ability to compete on a level playing field with our national and international competitors. In addition, credit unions, which operate in many of the same rural communities as our members, will receive expanded powers through Bill 134.

We recognize that the financial services marketplace is changing. Lenders are making inroads into the insurance marketplace. The federal Bank Act now allows banks to own insurance companies and retail certain insurance products to their bank customers. Provincial governments are modernizing statutes which govern provincially regulated financial institutions.

In 1990, OMIA formed its financial services committee to give serious study to how these changes would impact the farm mutual system. This issue has had a high profile at every general meeting of our association over the past four years.

A comprehensive, seven-phase study was conducted. This study included an intense process of consultation with the individual member companies. Surveys indicated that the members have a strong interest in being able to

offer such financial service products as term deposits, life and disability insurance, annuities, RRSPs, RRIFs and other financial products to the existing client base.

The preferred option of the members to introducing any of the foregoing new products is by way of a subsidiary or subsidiaries that would be jointly owned by the farm mutuals.

At our general meeting in November 1993, the membership, by a 90% vote in favour, passed two resolutions which instructed the OMIA to move forward with action which would allow the members to collectively own a subsidiary financial institution or financial institutions which would allow them to provide a broader range of services in the future.

To be able to move forward on this project, the farm mutuals need a change to the Ontario Insurance Act which would permit them to own a financial institution subsidiary or subsidiaries. This is a power which our competitors already enjoy.

Because mutual insurance companies are owned by their policyholders and have no shareholders, they cannot form upstream ownership links with other financial institutions. We are only able to diversify by expanding in-house activities or through downstream ownership of other financial institutions.

The amendments: Currently, the Ontario Insurance Act restricts the ability of farm mutuals to own subsidiary companies. We are only permitted to own downstream property and casualty insurance companies. In general, we require this section of the Ontario Insurance Act expanded to allow our members to own a broader range of subsidiary companies.

We appreciate the support which our members have been shown as they presented their concerns to MPPs from all parties across the province. Through the association, our financial services committee has worked with the Ministry of Finance on an acceptable solution. We appreciate the cooperation which has been shown by all parties and hope that you will support the proposed amendments which will:

(1) Amend the Insurance Act to permit farm mutual insurance companies, which are members of the fire mutuals guarantee fund, either individually or jointly as a group, to own subsidiaries which would be prescribed in regulations. These prescribed classes of subsidiaries would include financial institutions, service corporations and corporations engaged in ancillary businesses.

We support the requirement that investments must result in control of the subsidiary by the farm mutuals, individually or as a group, through voting shares of the subsidiary. Our intention is to move forward in a steady, well-planned fashion as has always been the practice of the farm mutual system. Our members require that of us.

We recognize that any investments in subsidiaries must be approved by the commissioner of insurance, and the appropriate terms and conditions will be set. We recognize that the regulators will need to approve appropriate business plans before approving any new powers for the farm mutuals.

Feedback from our members tells us that they are also



willing to consider sharing of services as a method of achieving cost-efficiency.

In addition to allowing the farm mutuals to expand their service area to other financial services, the amendments which we are seeking through Bill 134 would also allow our members to jointly own subsidiary companies which could provide advisory services to the mutuals themselves. Examples of these types of companies include data processing services and loss adjustment services.

In general, doors would be opened for the farm mutuals to manoeuvre with the changing financial marketplace while regulators would retain the powers to demand that the proper safeguards be in place.

(2) Amend the Corporations Act to clarify that all Ontario-incorporated insurance companies including farm mutuals have full powers to network the financial products or services of other financial institutions.

(3) Amend the Insurance Act to permit general insurance agents of farm mutuals, which are members of the fire mutuals guarantee fund, to sell the products of other farm mutuals and of another insurance company subsidiary of the farm mutuals.

Naturally we recognize that this provision will be subject to meeting any applicable licensing requirements.

The farm mutuals have been an important part of the fabric of Ontario for over 100 years and have served their communities well. We recognize that we cannot adopt a business-as-usual approach for the future. The competitive environment will not be business as usual. Intense competition will result in lower rates for most types of property and casualty insurance. Other financial institutions will be moving towards providing one-stop shopping for their customers.

We need these few key amendments in order to grow and remain competitive in a rapidly evolving financial services marketplace. We need to move forward with our preparations for the future. We cannot afford to be held back while our competitors are making their preparations for the future.

Our competitors already have the powers that we are seeking. We see Bill 134 as the only viable route to give the farm mutuals the legislation which they need within an acceptable time frame. The changes which we have requested are not extensive changes. They've been well researched, and prudential concerns have been addressed.

The farm mutuals have developed a strong market niche in rural and small-town Ontario. They recognize the impending changes in the financial services marketplace as a whole and are striving to maintain their market niche. They recognize that there will be increased competition for rural and small-town customers by other insurers and other financial institutions which are increasingly able to network their existing products with insurance products.

We appreciate the support that we've received thus far. We appeal for your continued support. Thank you.

**The Chair:** Thank you very much for your presentation. We have a little more than five minutes per caucus. We'll start with Mr Kwinter.

**Mr Kwinter:** Thank you very much for your presentation. I have absolutely no problem at all with the recommendations that you're putting forth. I do have a couple of questions.

In 1959, you formed your own reinsurance company, and that was I assume a cooperative venture where all of the farm mutuals participate and own the reinsurance company. Is that right?

**Mr Edward Pellow:** That's correct.

**Mr Kwinter:** Also, when you have this guarantee fund, that is also all of the mutual funds involved in that.

**Mr Pellow:** That's correct as well.

**Mr Kwinter:** Is it contemplated that these downstream ancillary services would be the same kind of cooperative effort, or would every single mutual fund have the ability to go out and set up its own individual subsidiary?

**Mr Pellow:** I think it would be possible for them to have that ability, but they would have to meet the requirements financially and so on to do it. It would be very unlikely that would happen inasmuch as it would require that cooperative effort you mentioned to capitalize most of those. It would depend a little bit on the nature of the business and the service that this subsidiary company was providing for the mutuals and what capital it required to provide that service.

**Mr Kwinter:** If the regulators set a minimum capital requirement for setting this up, be it either a trust company or whatever it is they were going to do, you would have no problem if that required either all of the mutuals to band together or groups of them to meet those requirements?

**Mr Pellow:** They would certainly have to meet that requirement in order to do it and we would have to live within that need.

**Mr Kwinter:** I don't have any other questions.

1550

**Mr Gary Carr (Oakville South):** The amendments here that you've talked about, what is your understanding of the government? Is the government supporting them? You mention in there that you've talked to them. Are they going to support the amendments? What have they said to you?

**Mr Glen Johnson:** We've had very good support from the ministry personnel and the minister's office and the government, and in fact members from all parties seem supportive so far.

**Mr Carr:** On page 8, halfway down the page, you say that some of the concerns have been addressed. What were some of the concerns?

**Mr Glen Johnson:** Our concerns that we weren't able to own any downstream subsidiaries other than a downstream insurance company, those were our concerns that we presented to the MPPs across the province, and as I say, we've had good support from all three parties.

**Mr Owens:** I don't have any particular questions. I do want to thank you for your presentation. In terms of the mutual assistance—pardon the pun—that we've given each other, there have been a number of rural members



like Paul Klopp, the Minister of Agriculture's parliamentary assistant, Pat Hayes and my colleague to the right, Paul Johnson, who, when he's not being neutral as Chair, was quite active in caucus in terms of the lobbying effort.

I'm pleased that we're able to do this for the farm mutual and for the rural community as a whole. I think that these amendments are much needed and I certainly appreciate the work that has gone into these amendments from your perspective as well.

Your comments with respect to the subsidiary business, I was wondering—you mentioned data processing—if you've lined up Co-Operators Data Services Ltd as a potential alliance.

**Mr Glen Johnson:** We haven't done any specific activity in that area yet, but it certainly is a possibility for the future.

**Mr Owens:** I see the business cards coming out behind you there.

**The Chair:** Are there any further questions from the committee members? Seeing none, the Ontario Mutual Insurance Association, do you have any more comments?

**Mr Glen Johnson:** I'd just like to express our appreciation for the reception we received all across the board. As I said, we feel Bill 134 is our only route to get this in the near future and we sincerely hope you'll carry through and actually do it.

**The Chair:** I'd like to thank the Ontario Mutual Insurance Association for making its presentation before the committee this afternoon.

#### ONTARIO ASSOCIATION OF SMALL CREDIT UNIONS

**The Chair:** The next presentation this afternoon is by the Ontario Association of Small Credit Unions, if Bud Whitmell, president, and Murray Tighe, vice-president, would please come forward. I hope I pronounced your names properly. Please make yourselves comfortable. Whenever you're ready, if you would identify yourselves for the purposes of Hansard and the committee members, you may proceed.

**Mr Bud Whitmell:** Thank you, Mr Chairman, honourable members. My name is Bud Whitmell. I'm the president of the Ontario Association of Small Credit Unions. Murray Tighe is our vice-president. We thank you for the opportunity of appearing here today. I would also like to give special thanks to our MPP for my area of Parry Sound, Mr Ernie Eves, for making the arrangements. In the interests of time, I'll get started right into our brief.

Our association was formed by a small group of small credit unions in 1990 because we were concerned about the rapid decline in the number of small credit unions and what we saw as a movement away from the true credit union philosophy.

In the beginning, credit unions were formed by small groups of people pooling their funds together to help each other, as for many credit was not available from the banks. Most credit unions began with assets of less than \$100. Their motto was a smiling man holding an umbrella. Raining down on him were the words, "Illness," "Hard times," "Financial distress." I questioned why the man would be smiling with all of these things

happening to him. I was told he was smiling because he was going to his credit union and he knew that he would get help there.

When I first became involved in the credit union movement, I was given a training manual that had a lot of questions and answers to it. I guess the one that most attracted me to serving my credit union was the question, "Who is the best person to serve on the credit committee, the man running a machine in a plant or the controller of the company?" The answer was the man running the machine in the plant. The reason he would be best suited to serve the credit union, either on a credit committee or the board of directors, as opposed to the controller of the company was because he could more easily relate to the needs of his co-workers than could a professional.

As credit unions grew and became more sophisticated, that motto was discarded by some and replaced with a new motto: "Not for profit, not for charity, but for service." That too, more recently, was replaced by the new, modern hands-and-globe symbol. Some credit unions had grown to sizes perhaps beyond anyone's expectations. It became clear that the current act did not meet the needs of these near-banks, nor were the regulatory powers equipped to deal with them. The large credit unions wanted and needed new rules, and so did the regulators.

The previous Liberal government introduced its Program for Change, and change began through ministry directives and OSDIC bylaws and its sound business practices manual.

The larger credit unions, with assets in the hundreds of millions of dollars and memberships in the thousands, many of them personally unknown to the credit union employees, found that the machine operator in the plant didn't have the expertise to deal with this new situation. So they recruited professionals from the banks. The ministry in turn recruited examiners from the banks.

This seemed to work fine, except for the hundreds of small credit unions that had not evolved. We were still way back there with that smiling man and his umbrella and the machine operator from the plant serving as a director or as a credit committee member. Shortly after the Program for Change came out, and the implications of it, one small credit union wrote a letter to the ministry. A line from it said, "The very rules that are supposed to save us are going to put us out of business." That is exactly what happened.

There were over 1,000 credit unions in Ontario 10 years ago. There are now fewer than 600. An article in Credit Union Central's Spectrum in 1989 predicts that by the year 2000, the number of credit unions will be 300. It is not the large credit unions that are disappearing; it is the small ones.

In your package, I've given you a copy of that article. Just one other quote from it says that he "found a trend which hints that by the year 2000 the number of credit unions in Ontario will be 300." This was in 1989. "That's about half what it is now."

From the analysis, we can see that big credit unions are getting bigger while small ones are either getting



merged with other ones or going out of business. The future will be one of fewer but larger credit unions.

Why is this happening? At workshops we have had at each of our meetings over the past four years, our members have identified the same two biggest problems facing small credit unions: (1) getting volunteers to serve on their boards and committees and (2) coping with ministry paperwork and reports.

I've attached a copy of one of these directives which, I've been told by the author of it, Mr Poprawa, who, I understand, is back here, is very simple and straightforward and anyone should be able to understand it. I have been managing my credit union since 1979 and I have a great deal of difficulty reading the thing, let alone understanding it.

This is nothing new to Harvey and Andy. I've told them that before. I ask that, if you read nothing else in the package, some time you would read that and tell me if you think the machine operator in the plant or the truck driver really can understand that and follow its directions. Its intent is very good, by the way; it's just very difficult to read and understand.

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As well, small credit unions are not receiving the help they need. When they encounter difficulties, if help is requested, usually the advice given is to merge with a larger unit.

In the attached article concerning mergers, a general manager involved in 16 mergers states: "I believe that the credit union system's market share problem can be corrected to some extent through mergers. If limited-service credit unions merge with full-service ones, then we can pull business away from the banks and the trust companies."

Also in that attached article, the very last part of it, he says, "There are a lot of small credit unions that are doing an excellent job with limited resources, but they just can't offer a full-service package." I may add to that, nor do they want to. This credit union started in my basement, which was fine, and I guess rather common back then, but you just can't do that today.

On that note, I would just pause for a minute and ask our vice-president, Mr Murray Tighe, to tell you just a little bit about his credit union.

**Mr Murray Tighe:** I represent the Goodyear employees' credit union in Bowmanville. We've been operating for 37 years. We're about \$1.7 million in assets. In that time we have never had a loss. We always have paid dividends. We do not have bankruptcies or anything like that. I am the manager and, incidentally, my office is still in the basement.

**Mr Whitmell:** There appears to be an obsession with being big and getting bigger. We regularly get the report of the 100 largest credit unions: the latest one I have attached for you there, just to show you. I have yet to see a report on the 100 credit unions that have continued through the years to keep that man with his umbrella smiling.

We're not the only ones concerned with the disappearance of small credit unions and their philosophy. In an

article in *Spectrum* commemorating Central's 50th anniversary, Central's full-time general manager, who was appointed in 1947, Mr John Hallinan, stated:

"Credit unions are dominated by professional bankers. Many of these people don't know the historical background of the movement and focus on profit instead of service. We have gradually devolved into just another industry."

He also states that credit unions have lost their values in the drive to become professional.

We wish to stress that we support our colleagues in finally getting the act that they feel they need to compete with other financial institutions in the marketplace and we wish them well. However, the act they need to survive is going to speed up the death of those of us who do not wish to compete in the marketplace with the banks. We do not wish to deny them the act they need to survive; we are sure they do not wish to see us die so that they can live.

What, then, is the solution? I have mentioned this to Harvey and others in the ministry several times. Before you can find the solution, you have to identify the problem. The problem, as we see it, is that the ministry officials are attempting to do the impossible. It is not possible to make a set of rules for a \$700-million credit union that can also apply to a \$700,000 credit union. It is like trying to make rules for a small family corner store and then applying it to Eaton's in Yorkdale, or vice versa. They are just too different.

That is the problem we are currently facing. We have a set of rules, the current act, designed to meet the needs of small credit unions and clearly not adequate to meet the needs of the modern larger units. But the solution is not now to make a new act to meet the needs of the larger units that is unacceptable to the smaller units.

To me, the solution is obvious: Allow a one- or two-year phase-in period for the new act. Allow credit unions, during the phase-in time, to determine which act they prefer to operate under. By the end of the phase-in period, the number opting for the old act would determine whether or not it warranted keeping.

Alternatively, the two acts could be combined, the new act being part A, the old act being part B. Credit unions could then choose which portion they preferred to be regulated under. There may be other solutions, but it must be clear that it is not possible for both groups to survive under the same set of rules.

Having said that and hoping that some consideration will be given to our suggestion, by the way, I wish to also make clear that we don't think the old act is perfect either. It has a few flaws, but we can live with it, with a few changes.

We see four basic flaws in the new legislation and they are outlined in the attached report.

We feel that under this act the true philosophy of credit unions that is practised in small credit unions is disappearing, and this act seems to promote it.

The reform bill is written in such a way that it appears to circumvent Parliament by having the most important issues dealt with by regulations rather than the act.



The director of credit unions has been given extraordinary powers without a third-party appeal process. The appeal to the Commercial Registration Appeal Tribunal in the current act has been replaced with an appeal to the director. The concern we have with that is if the director makes a ruling concerning our credit union and we don't agree with it, he says, "Fine, you can appeal my ruling, but you're going to appeal it to me." If he has already made his ruling and he has already researched it, I doubt very much he's going to change his mind.

The reform bill appears to be written from the viewpoint of the regulators rather than the credit unions it is supposed to serve.

Because I'm nowhere near my hour, I had gone through the act and I pulled out about 50 pages of sections that I wanted to comment on and narrowed them down to three:

Page 22 in what I have—I'm not sure what page it would be in what you have—is dealing with the formation of new credit unions. Any group of 20 individuals can form a credit union, provided the minister is satisfied that certain criteria are met.

Number 4 of that says, "The credit union will be operated responsibly by individuals who, by virtue of their character, competence and experience, are suited to operating a financial institution." I'm very confused by what "competence and experience" means. Would the man running the machine in the plant be considered competent and experienced or would it have to be someone with a banking background? I'm not sure.

Number 5 says: "The incorporation of the credit union will serve the best interests of the cooperative financial system in Ontario." I thought the purpose of the credit union was serving the membership that formed it.

On page 55, section 85, dealing with capital adequacy, subsection (2) says, "A credit union shall comply with the regulations governing adequate capital and liquidity." But nowhere does it tell us what adequate capital and liquidity is. I understand there are some regulations coming. At this stage we may agree with that, but who determines what "adequate" is?

We have some concerns about recommending the approval of an article like that when we don't know what it means. If it means 3%, 5%, maybe; if it means 60%, we're not so sure. It just seems very wide open and will be dealt with. I'm not sure how regulations come into effect, but I understand they don't come through the House. I'm not really sure how.

**Interjection:** Cabinet.

**Mr Whitmell:** Okay, thank you.

Further on down there, it says:

"Despite a credit union's compliance with the regulations governing adequate capital and liquidity, the director may impose the requirements set out in subsection (1),

"(a) if there are reasonable grounds to believe that the credit union is not complying with the requirements of this act and the regulations concerning the management of risk in making loans and investments and in the general management of credit union business."

It doesn't define what are adequate risk management procedures. If those are the procedures that are carried out by the machine operator from the plant, fine. If they are requirements made out from a recruit from the banks, which were for ever turning down the people who formed credit unions, then they're going to be turned down by their credit unions as well.

**1610**

On section 87—and I'm not sure what that deals with; I just pulled that page out—it says, "Decision final." You have an appeal to the director, and if you're not happy with the appeal to the director, you may appeal to the superintendent of insurance. It says, "The superintendent's decision is final and shall not be stayed, varied or set aside by any court."

I guess that one bothered me a bit because we would assume the decisions that he or she made would be made in an appropriate manner so that they probably, quite likely, would be upheld by the court. So why would there be a fear of having it proceed to a court unless maybe they felt the decision wouldn't be upheld?

The last one, and I think this is the section that frightens me the most, is the enforcement section. Very broad powers have been given to the director to do virtually whatever he or she chooses. In section 237, the director can make an order ordering any person to "(a) stop doing any act or pursuing any course of conduct."

I believe in that part he would have to identify the course of action or the act that the person was doing and then say, "Stop doing it," but clause (b) says he can make an order ordering any person to "do any act or pursue any course of conduct." That, to me, is very wide open. As I say, I had about 30 or 40 pages, but I just pulled those few out.

Having said that, I would like to thank you again for giving us the opportunity to appear here today. I would be pleased to try to answer any questions you may have.

**Mr David Johnson:** I thank you very much for your presentation, Mr Whitmell and Mr Tighe. I have a letter for you here, actually, so I better pass that along before I forget it. It's from a mutual friend of ours. Just toss it over.

**Mr Owens:** Name names.

**Mr David Johnson:** Ernie Eves. How much time do we have, by the way?

**The Chair:** If we were going to allow the Ontario Association of Small Credit Unions a full hour, then we'd have about 15 minutes per caucus, but we may not require all that time. So I would just like to start off with some questions, and if it gets out of line, of course, I'll let you know that.

**Mr Whitmell:** If I may mention, I was speaking with Jonathan Guss and I said I'd give him the last 15 minutes of my time, providing he devoted it to the issues of small credit unions; he assured me he would.

**Mr David Johnson:** He seems very happy about that, at any rate.

I must say I share the concern that you're expressing with regard to the small credit unions. In my mind,



there's been no doubt that they have been a great credit to many communities across the province of Ontario and they've provided a great service to a great many people. I have expressed this in the House, having been associated with the East York credit union as the mayor in East York and knowing the people involved with that particular credit union, fine people who have run that credit union well—as the vast majority of small credit unions have been run—and certainly have provided a great service, primarily to the employees of the borough of East York. I think the assets are somewhere between \$2 million and \$3 million, as I can recall. My recollection is that there was some \$200 or \$300 that was put aside for defaults.

I think you, Mr Tighe, have expressed that your experience has been an excellent one: no defaults and no difficulties. That's certainly been the experience in East York. A lot of that has to do with the fact that the people work together, they know each other. In terms of a risk assessment, you know the person you're dealing with. No large bank could possibly assess the person who's coming in for a loan to the same degree as the small credit unions can because you work with those people day in and day out, and they're on the other side of the bench or at the desk in the next office. That's certainly an excellent point for the small credit unions, plus the fact that, who would want to default on their neighbour next door?

**Mr Whitmell:** I hope no one.

**Mr David Johnson:** No one. Whereas if it's a larger institution, then that philosophy—is that the word you've mentioned here, “philosophy”? There's a philosophy of the small credit union, certainly no question about that.

You've been dealing with the ministry on your concerns, I presume. I think you mentioned that.

**Mr Whitmell:** Yes.

**Mr David Johnson:** You have suggested, for example, that we have two acts over a two-year period, running in tandem I guess. I believe that's what you're saying.

**Mr Whitmell:** Again, I'm not that familiar with the parliamentary process, but as I said, I don't think it's fair to expect the large ones to operate under the current act; it just doesn't suit them. But I don't think that to meet their needs ours should be thrown away. We're quite content with the current act.

**Mr David Johnson:** So you're essentially saying perhaps that the way this would shake out is that many of the small credit unions would choose to operate under the existing act, whereas the larger ones—I'm sure Mr Guss will say he represents smaller ones as well as bigger ones, but you don't represent any of the bigger ones, and perhaps the bigger ones that he represents would go under the larger act. Have you put that suggestion to the ministry staff?

**Mr Whitmell:** No, I haven't. In fact, I've been putting this process together over the last few weeks and I've called several of the members of our executive, and we, through discussions, came up with that. We really didn't know what the solution was, but we knew that the current act was probably fine for us.

I would like to say that it's very difficult—and this is a problem that we have and I think that the ministry has—how do you define “small”? I think that's why we suggested it that way.

I was talking to a credit union a couple of weeks ago, and had they not told me they were \$30 million in assets, I would have never known that they were bigger than \$1 million. A lot of them do share our philosophy. That's why I suggested to leave it open and let them choose. I don't think you should be able to jump back and forth every second week, but over the term of two years those who want to try the new act—we've already tried the old one—if they say, “Yes, I like it,” and at the end of that time if the majority or there's none, except perhaps our little group, who are happy with the old act, then that would certainly send a clear message.

**Mr David Johnson:** I would like to redirect some of your questions to the ministry staff at this time perhaps, and that might be most instructive during the time we have. I wonder, Mr Chairman, then, I don't know who I'm directing this to; to the gentleman up there probably. I think it might be a little more technical, with all due respect to my colleague.

**Mr Owens:** Let's see how technical you can get first.

**Mr David Johnson:** All right, we'll give it a shot. For example, the last question that was posed, then, Mr Parliamentary Assistant, was with regard to the enforcement powers of the director. Mr Whitmell has indicated that in section 236—I don't have it right here; I guess if I looked it up I could find it—the director can make an order to any person to stop or to do any act or to pursue any course of conduct. That seems fairly broad. I see you looking over next door already.

**Mr Owens:** This is a question that I was going to answer on my time, but I'm glad it's on yours. I'll ask Mr Glower from the ministry to take the question.

**Mr Glower:** This particular enforcement power is a fairly broad enforcement power and would normally be applied in a situation where other enforcement powers either may have not worked or which would apply in a very particular circumstance. For example, the director may have said, “I want you to dispose of a particular loan,” or, “I want you to stop taking deposits,” or, “I want you to limit your capital growth” or your asset growth or whatever and there have been continuous infractions. This is a much broader power, but the power of course gives the person on whom that order has been issued a couple of appeal options.

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Firstly, there's a right to a hearing with the director of credit unions. Following that, there's a right to an appeal to the superintendent of deposit institutions, who is the, if you will, ultimate regulator, the ultimate authority at the regulatory level. Subsequent to that, to the extent that the superintendent varies or confirms or revokes that appeal, an appeal lies to a court from an order issued by the superintendent. So there is a full judicial process available to any credit union that may be issued an order of that type.

**Mr David Johnson:** Can I just back up from there



then and say that we've heard the presentation from the small credit unions, and there's a philosophy with the small credit union movement that is very close to home, that they know their people, and that is the essence of their service. I don't know how to phrase this exactly, but does the ministry staff recognize that philosophy?

The concern is that through the regulations that are being set up, the legislation that's being set up, the director perhaps having these powers or perhaps not, the superintendent's decision being final, this philosophy is going to be submerged and it's going to make it very difficult for the small credit unions to survive. I wonder what your response to that is, because I think we'd all like the small credit unions to survive; they're providing an excellent service close to home.

**Mr Owens:** I appreciate your question and I wanted to address, in terms of my response to the association, this issue. It's a very interesting philosophical question with respect to small and are things changing and will the nature of the small credit unions be diluted or negatively impacted by this legislation.

It's the view of the government and the minister and myself and most folks in the credit union movement—I would say that this group doesn't agree—that in fact, because the legislation is permissive in nature, the smaller credit unions may or may not choose to engage in the kind of business that will be allowed under this act. The presentation talked about a phase-in and an ability to choose acts. In fact, we have built in the choice to the smaller credit unions to participate.

Yes, there has been a shrinkage in the smaller credit unions over the last number of years and that's simply because there have been failures and there have been voluntary mergers in order to keep credit unions viable. But the ministry and the government strongly believe that the small credit unions will not be negatively impacted by the legislation and that in fact the regulatory regime that Mr Glower speaks of is not an onerous regime.

On the issue with respect to the worker on the shop floor that Mr Whitmell addresses, if I can suggest that the workers on the shop floor at Algoma Steel in Sault Ste Marie walked into a company that was selling for approximately \$1.50 a share, bought the company, the same workers, and the shares are now trading at approximately \$21. These are not workers with a master's in business administration; these are people like you and a lot of people around this particular room.

**Mr David Johnson:** In terms of adequate liquidity, that was another question that was raised by Mr Whitmell. I didn't get the section—

**Mr Whitmell:** The question wasn't on adequate liquidity; it was, "What does adequate liquidity mean?"

**Mr David Johnson:** Exactly.

**Mr Whitmell:** I think it was section 85 or 84.

**Mr David Johnson:** I'm sure the ministry staff got the question, at any rate. What does "adequate liquidity" mean? It apparently isn't defined.

**Mr Glower:** It's correct that "adequate liquidity" has not been defined; neither has "adequate capital." Both of those issues are subjects of regulations.

The coalition group that is representing all of the credit unions and the caisses populaires has been in discussions with ourselves in proposing models for liquidity as well as for capital. Right now, the present system says that every single credit union must have at least 10% of its assets held in liquidity.

There are a number of models that we are exploring which one could recognize that that stays the same as part of the new statute. Another option that we are looking at is that credit unions that belong to a league or an association of credit unions have access to a pool. There may be a certain validity in recognizing that belonging to that pool in fact reduces the need to have a 10% level. We don't know what that magic number is yet; we haven't figured that out.

There are other ways of looking at liquidity, and we've proposed one on a risk-weighted basis. The same as we have a risk-weighted asset model, we are looking at a risk-weighted liabilities model, a risk-weighted deposit model, as a new way of measuring liquidity. As that regulation is developed, we will then be able to say what is adequate vis-à-vis the regulation.

**Mr David Johnson:** Mr Whitmell has made the point that perhaps having all the credit unions under one act is equivalent to having a corner store in one of the big Eaton stores, governed by the same act. Is it possible that, for example, the definition of adequate liquidity is something that should differ for the small credit unions vis-à-vis the larger ones?

**Mr Glower:** Well, it's certainly an approach that we've taken. In Mr Whitmell's submission, he talked about this interest rate risk management. What we did there, and this is something that could be done with liquidity, is we had two different phase-in periods, not necessarily by the size of the credit union but by the complexity of the credit union. Now, the complexity generally transferred to smaller credit unions without a particular cutoff in asset size, so there is a longer phase-in period for those people to understand and look at their operations and figure out how it applied.

On the liquidity proposals, we could do something similar vis-à-vis a phase-in period. In fact, one of the options on the table is to have one of two different types of measures for credit unions. If they have the technology to measure, a more sophisticated or different way, for example a risk-weighted way, they could use that. They could go that route or they could go the flat route, and I'll use an example of 10%, which is the current system. We are looking at that as a possibility, again not by size but by complexity of balance sheet, if you will, and complexity of operation.

**Mr David Johnson:** Another section that Mr Whitmell mentioned, I think about the same time, had to do with the competence of the board, was it?

**Mr Whitmell:** Yes.

**Mr David Johnson:** What was that again precisely? Did you get the question?

**The Chair:** While there's a pause, Mr Johnson, I'll just let you know that you have about a minute left.

**Mr Whitmell:** It had to do with the formation of new



credit unions. I think, Harvey, it would be safe to say in the last 10 years there haven't been a large number of new credit unions formed; probably half a dozen at most, probably less.

**Mr Glower:** And probably you're being generous.

**Mr David Johnson:** But there was a definition.

**Mr Whitmell:** Yes. It says that before they can be formed, they have to satisfy the minister through the director that the people that are running it are—

**Mr David Johnson:** Are competent?

**Mr Whitmell:** Through their character, their experience and their competence, they were capable of running a credit union. Again, when we have words like that, who defines "capable" and "competent"?

**Mr Owens:** Who defines "character"?

**Mr Glower:** The response there is that there is a section in the statute that allows the director of credit unions, after the fact, in other words once a board has been democratically put into place, under certain circumstances, to question the fitness, character and competence of a board of directors.

This is a very lenient test, if you will, in comparison to the Ontario Loan and Trust Corporations Act where in fact the superintendent of deposit institutions is responsible for assessing the fitness, character and competence of a board of directors' member prior to that individual becoming a director of a loan and trust company.

We've had experience with certain problems in some credit unions over the past. This is a power which obviously we will have to exercise very cautiously and definitely be accountable for. It is a power there to ensure that directors live up to their standards of duty and care. It is a power there to ensure that directors are well trained, informed, educated as necessary and are aware of their liabilities under the statute. The experience in the past shows that this sort of power is necessary in those limited circumstances when that level of care is not being exercised.

**The Chair:** Thank you, Mr Johnson. Mr Owens.

**Mr Owens:** I think I'll yield to my colleagues.

1630

**Mr Jim Wiseman (Durham West):** You say you run your credit union out of your basement. Could you give me an idea of the kind of loans that you make? Whom do you make the loans to and what are they for?

**Mr Tighe:** I'll qualify that office bit. Goodyear allows me to have an office in the plant where I interview the people. All of my computers, records etc are in my basement at home, but I have an office where I meet the members in the plant. You wanted to know the loans?

**Mr Wiseman:** What kind of loans do you give out?

**Mr Tighe:** Our personal loan limit is \$20,000, and our mortgage loan limit is \$50,000, which puts us into the realm of just home improvements more than people buying houses. What further question was it?

**Mr Wiseman:** My next question is, what kind of collateral do you ask for when you're giving out the loans?

**Mr Tighe:** We register with the Personal Property Security Act, cars, trailers, boats. That is mostly what we register under the PPSA, that we take liens on.

**Mr Wiseman:** The brief says, "As for many, credit was not available from banks." A large number of people in my riding would say that nothing's changed there; they still can't get credit from the banks.

**Mr Tighe:** I had a person, he was a young man, married with three children, and he wanted to buy about \$5,000 worth of furniture. The banks wouldn't have anything to do with him. I'd better not say the name of the company, but when he investigated its interest rate, they told him it would be somewhere between 18% and 30%.

**Mr Wiseman:** I've been told that trust companies and banks will not write loans under \$5,000 because it's not worth their while. I guess this leads me to where I was going with these questions. I guess for many, many people, your credit union would be almost the last place where they could get a loan under \$5,000. Is that correct?

**Mr Tighe:** Oh, yes. Many of our loans are less than \$5,000.

**Mr Wiseman:** I think I understand some concern here that with this legislation it might be forcing small operations such as yours to act in a way that a big operation would, and that would terminate the possibility of your making these kinds of loans. Am I understanding this correctly?

**Mr Whitmell:** I think that we are being pushed. This isn't the act. If I have misinterpreted or misrepresented it, it isn't this act that is causing the problems, and the new powers that are being given are not our concern. I think what is finally happening is what has been happening over the last five years through ministry directives and the OSDIC bylaws and their manual that are now being incorporated, as well as these additional powers. It was quite accurately said that we don't have to use them if we don't want to. All the new things being added are permissive and we appreciate that fact. We're just saying the practice.

The example that I give, as I've been talking to the Liberal critics and the Conservative critics about it, and I put this example to a ministry official and he agreed with me, is if I have two classes of borrowers, one the family man who works hard all his life, has been at the same job for 15, 20 years probably—as I say, my father did. He always earned \$200 a year less than it took to feed his family of six, struggling by, but so basically honest that you wouldn't even need loan documents. If he owed the money, he paid it. Say he wanted to borrow \$4,000 to buy a \$4,000 car, because he just wasn't able to save up. He's giving us \$4,000 collateral on a 10-year-old car that's really worth nothing to anyone else but that's all he can afford to buy, but he has a good reputation and a good record.

Then we have another borrower who always has borrowed in the past. We've always had problems collecting, but he's investing here, he's investing there. He goes to Las Vegas, he makes money, but every loan we've ever had from him, we've either had to go through



a co-signer or a repossession of his security. So he has a \$30,000 Cadillac and wants \$10,000. Who do I lend my money to, the guy with the \$30,000 Cadillac with \$10,000 in security or the man who wants \$4,000 with a \$4,000 car as security that probably on the market would be worth \$2,000? And I'm supposed to jump for that security and I'm to turn this man down because he should have 25% of the money in there. I think those are the kinds of people we're trying to help. I quite often say that I'm not in the used car business, that we're here to lend money to people who pay it back. But I am not really allowed, under the regulations, to lend that money to that member unless he comes up with some more security, but he hasn't got it, except his good character.

**Mr Wiseman:** And that's the kind of latitude that you'd like to see?

**Mr Whitmell:** We have always said that we have the three Cs of credit granting: character, capacity and collateral. A memo that came out from the Credit Union Central group defined the three Cs of credit granting as collateral, capacity and character. We still believe in the old character first, capacity second, then collateral. If you meet the first two, hopefully we can find something that meets the third. But it's not the act; it's the current practices that are making this difficult for us. That's my opinion.

**Mrs Haslam:** There are a number of questions I was going to ask. Were you consulted in this? I'm getting a definite opinion that you are and that you've met—you know Harvey here. I don't even know Harvey.

**Mr Whitmell:** Harvey didn't come to us, but we sure went to him.

**Mrs Haslam:** Obviously you've been consulting with the ministry on a regular basis.

The other thing that I was going to question you about was the permissiveness of the legislation. I mean, no one's forcing you to do what the big ones do. It's a permissive statute that therefore provides flexible business powers, so that will assist you, if you want, but it also will assist to serve both large and small. But I think you've answered that too, because you understand that. You understand that there's more of a permissive area about it.

**Mr Whitmell:** Oh, certainly. Absolutely, yes.

**Mrs Haslam:** I also looked at your presentation. Talking about volunteers to serve on the boards, I was going to ask you about the number of credit unions, small ones, that have been closing down. My colleague Mr Owens mentioned that already and you said yes, it is hard to get people to serve on the board and that is a problem some people will have in small credit unions, and some of them are closing down. You're absolutely right. You are aware of that.

That brings me to one of my last ones, in two minutes, which is what I usually have as my time limit. Talking about the complexity of the business you're in, if I were a member of your credit union, I would expect you to be as well versed and as responsible with my money whether you were small or large. I question this idea of making a different aspect in legislation based on size,

because it really isn't about size; it's about the complexity and how you manage my money. That's what, ultimately, the legislation has to look at: putting some safeguards in place for you to manage my money and the safeguards to say that the woman on the plant floor whom you got to serve on your board is competent and is following those things that are required in this legislation to look after my money.

I just wondered, don't you see that the legislation looks at both large and small but it's about complexity? What is your definition of "small"? Has your board come to a conclusion as to what is the definition of a small credit union?

**Mr Whitmell:** No.

**Mrs Haslam:** Complexity and size.

**Mr Whitmell:** There are some credit unions which are \$40 million, \$50 million, \$60 million whose philosophy is the same as ours, and I mentioned that earlier. I was talking to a fellow, and if he had not told me that he was \$30 million, I wouldn't have known that he was because he's talking the same way that we are. I wasn't talking about the new powers, or whatever.

I've tried my best to find that manual that I had, because I thought it was so good. Why would they choose the man running a machine in the plant to be on the credit committee to determine whether his co-workers should get a loan or not? My answer with, I hate to say this, a banking background was, obviously the controller should be on the credit committee, just as you are saying. He's probably got a degree. He has a lot of financial knowledge. But the answer was, "No, the man on the floor." Why? Because he could understand when one of his co-workers said, "I can't make a payment this month because one of my children was sick and I had to take three days off work," or "The motor went out of my car." They can understand this, but the controller says, "What the hell's the matter with you?" because he's living on a fixed salary, probably a pretty big one, and he is able to manage those things, but sometimes the ordinary working person has a struggle just getting by. He doesn't have RRSPs and investments in General Motors and so on. His investment is in his home, his family and whatever he's got. So he can understand what perhaps the controller couldn't.

1640

We are told, "Oh, no, nothing in this act is going to hurt you." I'm glad you raised this, because I can come back to Harvey. I see Harvey as the controller; certainly not the man running the machine in the plant. I understand he has a couple of initials after his name, and I think that's the point we're trying to make. I've known Harvey for a number of years and I don't question his sincerity, his integrity. When he says that, I know he sincerely believes it. If we're comparing the man running the machine in the plant and the controller, Harvey, who is telling me, "No, no, Bud, this isn't going to hurt you; everything is lovely there," I say, "Thank you, Mr Controller, but I say it is."

**Mrs Haslam:** Then I think we disagree. I want Harvey controlling who gets my money, because Harvey



knows the risk factors involved. I wouldn't trust my money with Jim Wiseman, because Jim is friends with Wayne and I don't like Wayne, and he's going to give Wayne the money. I want Wayne to have more of an idea about the risks involved.

Philosophically, I can see—I've been a member of a credit union for a number of years. I started out with the teachers' credit union. My father was in one of General Motors' credit unions. We've been in credit unions a number of times. I just see this legislation as protecting those people who put their money into credit unions.

I come from a rural riding where farm communities join together. The farm communities benefit from credit unions because they understand what a farmer needs in a line of credit. I see the benefits. I just don't see what you're saying about this type of legislation affecting you adversely. It allows for some protection, but it doesn't infringe on what you want to do as a small credit union.

I wanted to just go into one other thing. You were talking about Credit Union Central. It's my understanding that half the members of Credit Union Central have assets of under \$5 million.

**Mr Whitmell:** That is correct, yes.

**Mrs Haslam:** A number of them are not a big situation. Credit Union Central, if I'm not mistaken, seems convinced that the bill is flexible enough to allow the small and the large to work together. I'm just passing that on. There must be something they're doing for the small credit unions if they feel this is flexible enough for both.

I will close with one quick comment. I'm sure my time is almost up.

**The Chair:** Almost.

**Mrs Haslam:** In your report, the last report, you talked about having the most important issues dealt with by regulations rather than the act.

**Mr Whitmell:** Yes.

**Mrs Haslam:** This morning we had someone come in who said that the flexibility of leaving it with regulations was appreciated, because when you look at a bill that won't be open for another 100 years, somebody was saying, then you need the flexibility to change. Think of a credit union and the loans it gave 100 years ago versus now. So you do need some flexibility in legislation, in regulations, and not just leaving it. I think there's a good balance there that is necessary. Thank you.

**Mr Owens:** I don't know if in the 60 seconds I have I can possibly change your mind with respect to our commitment to the philosophy of small credit unions. I believe it when you tell me that you're interested in lending a \$5,000 loan to the person to go out to buy the furniture for his or her home. I'll tell you, if you're lending money to people to go to Las Vegas, it's a problem to begin with.

The minister himself, as a member of the Creighton Mine credit union, a small credit union in the minister's riding, is attuned both as a member of this credit union and philosophically to the needs of the small credit union. I hope you'll continue to work with your good friend Harvey to resolve some of the issues that you still see as being outstanding.

I was also pleased to hear you say, and maybe I'm wrong on what I thought I heard you say, that you don't have a problem with the bill; you don't have a problem with the powers that it grants to the credit unions as a whole in the province. It's our view and our commitment that we can maintain the integrity of the small credit unions that you represent as well as having a large measure of deposit security, as my colleague Karen Haslam pointed out.

**Mr Whitmell:** I was reminded by Joe Mahoney in my discussions with Jonathan that I first told him, when I talked with him yesterday, I'd give him 20 minutes of my time. Further along the way, it was 15 minutes and later it was 10. He said he'd better hang up before it got down to nothing. It looks like we're down to 15 now. He assured me he would use that time to get across his views on the small credit unions.

Just in response, Mr Owens, then in conclusion, I said that we are happy with the bill because it gives our larger credit unions, our colleagues—and they're very helpful to the small ones. If you need advice, you can call them. They help you. I know Bob Clark very well from Creighton Mine. They do need better than the current act. We clearly understand that. The current act was made for small credit unions, because that's all there were. It's not fair to ask the large ones to continue operating under an act that they have long since outgrown, but we don't think it's fair to replace it with an act geared to them and then ask us to comply with an act geared to them. We are so totally different that it is virtually impossible to come up with a set of regulations.

That is our view. You cannot deny the fact that 10 years ago there were over 1,000 credit unions. They are down to 600. The report from the gentleman from Jet Power, which is a large credit union, says by that the year 2000, which is only six years away, we're going to be down to 300. The large ones are not disappearing; it's the small ones. As much as you tell us, "Oh, no, no, you don't understand," we do understand. We had hoped that through this process we could make enough of you understand how we feel, because we are very sincere in our concerns about our credit unions.

**Mr Owens:** I don't think I'm telling you that you don't understand. I think you understand very well, actually, what it is that you're saying and I think you understand very well what it is that I'm saying. With respect to the contention that there's been a downsizing in the movement, no one's going to dispute that. I ask you, however, to look at the reasons why there has been that kind of a downsizing. There's a whole range of reasons for that downsizing. It simply cannot be laid at the feet of larger credit unions that they are eating up smaller credit unions and that this bill will facilitate that process.

**Mr Whitmell:** Jonathan, you have 12 minutes.

**The Chair:** Before you go, I think Mr Kwinter might like to just make a comment or ask a question. Indeed, Mr Kwinter may like to use 10 minutes or so.

**Mr Kwinter:** At least. I'm very anxious to participate in this discussion. First of all, let me clarify that I'm very supportive of the credit union movement. I have been,



and still am, a member of a credit union for at least 20 years. I do most of my banking through a credit union. I also was the minister responsible for bringing in Program for Change and I have the scars on my back to prove it.

At the time, I travelled the length and breadth of this province, meeting with the largest and smallest credit unions, and heard many of the arguments you've put forward. You have to understand the rationale for the Program for Change. At the time, and this really goes to the issue of how come there were 1,000 then and only 600 now, a great many credit unions, the large and the small, got caught in a horrible mismatch in the 1980s. Most of them at the smaller level were insolvent. I say that without fear of contradiction. They were in terrible shape.

1650

There were complications because the large credit unions like the Hydro credit union were saying: "Why do we have to pay a percentage of our deposits to OSDIC when we're never going to default and the only people who are going to default are the little guys because they're not being run properly? What we are in fact doing is we are financing their ineptitude. As a result, we're not going to pay." We had terrible problems with that, if you'll remember, where they said, "Sorry, we are not going to pay our premiums because we are never going to default but these guys are."

So the trick is—and without getting into the whole issue where there was mismanagement at the large ones as well as the small ones, where people were lending money to themselves or to their brothers or to their relatives, and all of those things that went on—it really is an issue of consumer protection. Ms Haslam hit the nail right on the head. It doesn't matter whether you put your money on deposit in a little one or in a big one; you want security of that deposit. You want to make sure that deposit is going to be safe and that suddenly one day you're not going to hear that the credit union has shut down and you've lost your life savings because they got frittered away because of mismanagement. So this whole thing is an issue of consumer protection or depositor protection.

The credit union that I belong to is a bank. I can do anything at that credit union, basically, that I can do at a bank, and it has the added advantage, because it is a credit union, that it doesn't have to meet some of the requirements that a bank does, which is fine, because I think it does provide that personalized service. I walk in—I don't go there very often because my wife does all of our banking; the reason we're involved is that she's a school teacher and her money gets deposited there, and that's how it works.

The point that I'm trying to make is that I understand the need to have some flexibility in the way you operate, but I don't see any flexibility in the protection for the depositor or for the consumer. I think that the depositor and the consumer have got to have the same protection, regardless of where they put their money.

You have characterized your operation as basically lending money to people who want to buy a car, who want to buy a boat, who want to buy a skidoo or want to do some home renovations, as if that is all you do, but

you're also a deposit-taking organization. There are people who put money into your institution only because they get a little better rate of return on their deposit and they don't borrow any money and they require the same kind of protection anyone else requires.

That is the trick and that is why it's important that there be some standard of competence in the people who are managing those moneys. I haven't been as close to the credit union situation in the last few years because I left as the Minister of Financial Institutions, became the Minister of Industry, Trade and Technology and now I am the critic for Economic Development and Trade, but I am very sympathetic to a recognition that maybe some of the requirements and some of the reporting should be staged depending on the volumes of deposits that are being held, as long as there is no dilution of the protection for the depositor. I think the depositors should have the same protection, whether they're putting it into a credit union that meets around the kitchen table or whether it's into an institution like where I go that, as I say, is just like a bank. You couldn't tell the difference whether it was a bank or a credit union. I'd like to get your reaction to that.

**Mr Whitmell:** I don't disagree with what you're saying; I agree fully with what you're saying. That's why in the smaller ones, where you know everyone, you know who you're lending your money to; there's a bond. In my case it's community, but a very small rural community; in Murray's case it's the employees of his plant. I think we're very recognizing of that.

Our credit union just finished its 32nd year of operation. We have never, and I repeat never, lost one penny in those 31 years. Murray says they've written off probably \$10,000 over 37 years; I think Mr Johnson says his credit union wrote off \$200. We are very aware of those things. I think when you're lending money to people who know that they are borrowing their co-workers' money, and in my case and with every loan I give out people say to me, "Bud, I've heard the story 10 times before," I say: "You're going to hear it 11. This money does not belong to the Royal Bank or the Bank of Nova Scotia or the Toronto-Dominion Bank; it belongs to your next-door neighbour, your aunt, your uncle, your friends, your minister. That's whose money you're dealing with if you default in your payments."

We've had three bankruptcies and never lost a penny over them. They could have walked away. They said: "No, I will not. The credit union was there when I needed it, and I will not let the credit union down."

I would suspect that if a member of your credit union filed for bankruptcy, the money would not be repaid. We're very concerned about what you're saying, and I think that's why we are as successful as we are. We don't do it on the banking level; we do it on our knowledge of the people we deal with. We are concerned that the regulations that Harvey and his colleagues are applying on us as criteria for making loans are going to deny the very people we serve the credit that they have needed and so religiously repaid back.

I don't question Harvey's sincerity as he tells me that we don't need to worry about it. I see it happening. I've



been involved in two credit unions within our association that were closed down—Jonathan sees that clock going, I'm sure, as well as I do—one was a particular plant where the employees were on strike. They didn't have any jobs. They needed money. Some of them went to the larger—you said you can't tell the difference between the credit union and the bank—and asked for a loan. They would not even fill in a loan application for them, wouldn't even talk to them. They said, "Come back when the strike is over." The response was: "When the strike is over, I won't need the loan. I need it now." "Sorry, we can't help you." That is a reality that is happening.

Unfortunately, not the new powers that are coming for credit unions but the regulations that are coming are saying to us, "You cannot lend to those people that you've been lending to," in Murray's case for 37 years and in my case for 31. We sincerely believe that, and we feel the crunch of it. Every time we get a ministry audit come in, we feel the crunch of what they are saying to us with the poor lending practices that we have. If our lending practices are so poor, why have I never written—not me; I haven't been involved in it for 31 years—why has my credit union never written off a penny? Why does Mr Johnson's only have \$200 in there? Why in 37 years has Murray's only had \$10,000? We must be doing something right. We must have been doing something right, but those people are being turned away. We wouldn't be here today if we did not sincerely believe that.

**Mr Kwinter:** I hear what you're saying, and I'm quite sympathetic to what you're putting forward. But in every bit of legislation, if we were to tailor the legislation to law-abiding citizens who never had a problem, there would be no requirement for the legislation.

**Mr Wayne Lessard (Windsor-Walkerville):** We wouldn't need legislators either.

**Mr Wiseman:** What I'm hearing is that they don't need any legislation because they don't have a problem.

**Mr Kwinter:** That's right.

**The Chair:** Order. Mr Kwinter, please continue.

**Mr Wiseman:** If I understand, your question is, why are we legislating them when they don't have a problem?

**Mr Kwinter:** No, I'm not saying that. I congratulate you for your record and for your astuteness in the way you run it. What I'm saying is that historically, if you took a look at the credit union movement, and in some cases it was because there were fraudulent activities, but by and large even the most honourable and best-intentioned credit unions have made mistakes because the people running them did not have the competence to run them properly, and as a result they failed.

What I'm talking about is that there still has to be an element of depositor and consumer protection, and that is not to deal with the people who are running their operations efficiently, profitably and properly but to make sure that those people, even if they are well intentioned, have the proper restrictions on their ability, to minimize the risk to the depositor and to the consumer.

We have three examples that you've just cited. I'd like to be in a position of bringing in five where they've had a problem, and not only have they had a problem, the

depositors have lost all their money, and for whatever reason OSDIC was not paying because it felt they didn't comply with the restrictions of OSDIC, and it was a disaster.

1700

I remember, as a minister, I had people lined up all the time, not only with credit unions but loan and trust companies. I hate to remember the whole situation with Crown Trust and everything else that went on, and Re-Mor and the whole bunch of them. I had people suing me and the Ombudsman filing against me because we should have done something about that protection issue.

That is what this is all about. It is not aimed at those people who are running their operations properly. I hasten to add, it isn't even aimed at those that aren't, because I'm not trying to accuse anybody. It's aimed at setting criteria so that it minimizes the risk to the depositor and the consumer. That's really what it is. It's not aimed at the good guys; it's aimed at the potential problems and that's what it's there for.

**Mr Whitmell:** We understand. The only thing I would say is, you keep talking about the depositors. But they are members. It's a voluntary thing. They choose to belong to the organization and they know who their co-members are. They are an owner. They're not a depositor; they're an owner. Certainly, they have a concern that the people they elect to run their operation for them are the best they can find, but it's not an unknown thing. It's a membership organization and it's voluntary.

**Mr Kwinter:** If you get into the savings and loan situation in the United States and you get into the situation that happened right here in Ontario, where, "My God, he was my neighbour for 25 years. We used to go out bowling every night, and the guy absconded with my money. I can't believe it," I'm saying that you can't use that argument: "We know everybody. These guys are our friends. These aren't depositors; they're partners."

They are depositors, believe me. They're taking their money and they're entrusting it to someone whom they truly believe they can trust, but human nature being what it is, sometimes the person they think they can trust and who's been a stellar model in the community absconds with the money and they're left holding the bag.

The first thing they do is come back to the government and say: "What did you do about it? You had the obligation to regulate those guys. You had the obligation to make sure there was protection there and you didn't do it." That's what this regulation is all about.

**The Chair:** Mr Kwinter, I have to interject and say I wish I had chosen you to lead off the round of questions.

Being very much aware of the time, I want to thank the Ontario Association of Small Credit Unions for making its presentation before the committee this afternoon. Thank you.

**Mr Whitmell:** Thank you for allowing us.

COALITION OF CREDIT UNIONS  
AND CAISSES POPULAIRES OF ONTARIO

**The Chair:** Again, being very much aware of the time, I would like to call the Coalition of Credit Unions and Caisses Populaires of Ontario to please come for-



ward. According to our agenda, we have four presentations to be made. I would suggest to the presenters and to the members of the committee that we hear all the presentations concurrently and then we'll leave some time at the end for questions from the committee members to whomever they may choose.

Not to suggest there is any particular order, but I do have the Credit Union Central of Ontario, l'Alliance des caisses populaires de l'Ontario, la Fédération des caisses populaires de l'Ontario and Association of Credit Unions of Ontario. I would suggest that if any one of you would like to begin at this time, that would be probably good. Maybe Mr Guss would like to start, and if you would please identify yourselves as it becomes necessary for the members of the committee and Hansard.

**Mr Jonathan Guss:** Mr Chair, members of the committee, Monsieur le Président et membres du comité, we are delighted to be here et nous sommes fiers de faire une présentation bilingue.

I am Jonathan Guss, chief executive officer of Credit Union Central of Ontario. I'm going to speak for a moment, and you'll be glad to hear, I'll do it in English, on behalf of the coalition, and then I'm going to speak for a few minutes on behalf of Credit Union Central, because each of the four groups represented by the coalition has a different emphasis on our 16 main points outlined in the brief.

We're delighted to be here because we need this legislation, we've been working toward it for the last 17 years, and because you, the three parties represented on this committee, have agreed to act quickly and in concert to deliver it expeditiously. We very much appreciate your commitment.

We'd also like to thank the government staff both for their hard work and for their commitment to a very demanding consultation process.

The coalition I mentioned is comprised of four organizations. The four of us at the table represent 500 of the 550 credit unions and caisses populaires in Ontario. We represent French and English, north and south, members of leagues and those who are not members of leagues, urban and rural, full service and traditional and large and small.

Perhaps I should highlight at the outset that over the past five years our system financial performance has improved dramatically, with average capital increasing from about 2% of assets to over 4% of assets. In general, we're benefiting from sound financial management—I think we probably shouldn't be compared to bingos and trust companies—and we have \$12.5 billion in assets invested in Ontario today.

The people at the table with me are Pierre Lacasse, general manager of la Fédération des caisses populaires de l'Ontario, representing 43 caisses populaires; Joe Mahoney, president of the Association of Credit Unions of Ontario, representing 19 credit unions; Michel Paulin, general manager of l'Alliance des caisses populaires de l'Ontario, representing 14 caisses populaires, and myself, representing the 425 members of Central.

Each group is independent and distinct, as I said, with

a very different constituency, and therefore each is going to speak for itself. We do agree on every point that's in our written submission, but each group has different priorities and different pressing needs and each has agreed to leave out of the written submission points on which we did not agree as a group.

Normally we'd welcome questions at any time, but as you suggested, we plan to make four brief presentations totalling about 35 minutes and then we'd welcome your questions.

I believe you will see from our submission that we've taken our work very seriously. We've travelled to 25 meetings in cities and towns all over the province to gather comments from our members, and in our submission I hope you'll find we've presented thoughtful but concise commentary. It represents hard-fought compromise on the part of all of us and our 500 members.

Now, on behalf of Central, I have a few people with me:

I have our chairman, Joe Worona, of Oshawa Auto Workers' Credit Union.

The chairman of our legislative committee, Warren Hanstead, is here. Warren's from Ottawa National Defence Headquarters Credit Union. Warren is also chairman of the board of Co-operators insurance group, the largest Canadian-owned general insurance company in Canada.

Jim Allen is here. He is the chairman of the Small Credit Union Council. The council is a central within Central and it represents the 243 members of Central that we consider to be small credit unions. It's all the credit unions that are \$5 million or less. Jim's from Smiths Falls Community Credit Union.

Also, the first vice-chairman of our national Central is here, Allan Lanctôt. He's from McMaster Credit Union in Hamilton. He's been a key member of our coalition negotiating team.

There are a couple of other people here whom I just want to mention. From right here on College Street, we have Denis Tay of the Universities and Colleges Credit Union and Taras Pidzamecky of the Ukrainian Credit Union. The Ukrainian Credit Union is right next to the Bagel, so I think you should visit it at lunch some day. It serves, yes, the Ukrainian community, but also, thanks to this bill, the Portuguese community. So keep that in mind as one of the good things about this bill.

Also from our staff we have David Guiney, our general counsel—he's worked with government doing much of the creative work on the legislation; Marilyn Hood, our director of public affairs, and Brigitte Torok from our public affairs department. I'm sure you'll see the three of them over the course of the next three or four weeks as you talk and consult, and they'll be glad to answer your questions.

There are others here and I hope you'll have a chance to talk to them later.

Central is the association and the central bank for our members. Our members serve 1.2 million Ontarians. As central bank, we manage a pool of \$1.3 billion in Central. Our members have \$8.5 billion of the \$12.5 billion that



I mentioned, but each credit union in its own right is quite small relative to the banks and trusts. All of our credit unions are part of an integrated national financial network of 1,100 credit unions, where we have in the order of \$40 billion of assets.

1710

In the five minutes remaining for my presentation, I'd like to draw your attention to four issues. The bill does a lot for credit unions and caisses populaires, and for that we're grateful. With a few adjustments that we've outlined in this submission to recognize the uniqueness of the co-op system and to make the bill practical—adjustments, for instance, on the rules about co-op affiliates, audit committees, appointment of receivers, loan syndications and leagues—the bill will become a model for other jurisdictions, though we need those changes.

The four practical issues I want to touch on are: grandfathering of lending limits; OSDIC's line of credit from the consolidated revenue fund, which you heard about from Mr Poprawa this morning; the rules for subsidiaries; and the need to issue new forms of shares, which has also been mentioned.

I think I'll start with lending. We agree that licences should be required for lending, although we also believe that credit unions and caisses populaires—especially small ones, Bud—should not be required to apply for a licence for their core business, personal lending.

On the grandfathering issue, we had expected that the current lending limit for each credit union, a limit that has already been set by the regulator, would be grandfathered. We've seen a draft regulation that would in fact roll back lending limits, even for credit unions that are experienced at lending and well managed. This is a practical issue. We cannot stop doing business while regulatory exceptions are negotiated. The bill itself must grandfather current lending limits.

With respect to OSDIC, our deposit insurance agency, it currently borrows from chartered banks and from credit unions and caisses populaires. At present it borrows with a government guarantee that is limited to \$95 million. OSDIC's federal counterpart, the CDIC, can borrow directly from the federal consolidated revenue fund. This saves the CDIC money and lends an air of confidence to its operations. This loan from the CRF is explicit in the CDIC legislation. This, too, is a practical issue. OSDIC needs the same explicit recognition in order for credit unions and caisses populaires to be competitive.

The bill provides special rules for subsidiaries. These rules are similar to those available to bank and trust company subsidiaries, but credit unions and caisses populaires tend to own companies cooperatively or jointly with other credit unions and caisses populaires. They need to own such companies in order to be able to provide full financial services. Because each credit union or caisse populaire is relatively small, it is most efficient to own such service providers as a group. These cooperatively owned companies or, as we call them, co-op affiliates, must be treated as equivalent to subsidiaries. This is a practical necessity. We can't afford to restructure the ownership of our co-op affiliates.

Capital, my final point, is the base upon which all businesses operate. Financial institutions require a solid capital base for solvency, a cushion against bad times; for growth; for product development and innovation; and for economic development of the community. It is essential for credit unions and caisses populaires to build that financial base.

The bill is excellent on this point. It gives credit unions the capacity to build capital by issuing new forms of shares, in particular non-voting preference shares. This addition to the legislation is most welcome; it is also essential to permit credit unions and caisses populaires to compete fairly in our very competitive marketplace. It will empower them to become a driving force in economic development of the community and in small business lending.

The bill permits sale of such shares to members, with full, plain and true disclosure through an offering statement. The bill also permits the sale of these shares to the public, with a prospectus issued pursuant to the Ontario Securities Act.

This is a safe approach for members and for the public. For members, it entails a review by the director of credit unions. The director also does the examinations and has full information about credit unions and caisses populaires, so he will know if the disclosure is true.

Also, members are owners, and therefore have full and continuous rights to disclosure about their credit union. This is a fair, I would say excellent, approach. It recognizes our need for capital, it doesn't compromise the democratic principle of one member, one vote, and it gives a stronger base for an economic development of the community. It should keep share issuance affordable for small credit unions if they want to get into that market.

With that, I'd like to turn it over to my colleague Michel Paulin representing l'Alliance des caisses populaires de l'Ontario.

**M. Michel Paulin :** Monsieur le Président, si vous permettez, j'aimerais adresser mes paroles en français. Je vous remercie également de cette occasion pour faire valoir nos points de vue sur le projet de réforme sur les caisses populaires et les credit unions.

Je voudrais vous présenter à ce moment M. Raymond Boucher, vice-président du conseil de l'administration de l'Alliance et directeur général de la Caisse populaire de Kapuskasing.

L'Alliance des caisses populaires regroupe 14 caisses populaires et 27 points de service situés dans le nord de l'Ontario. Notre mouvement compte environ 57 000 sociétaires. Nous endossons en principe cette réforme législative.

Nos caisses populaires sont de petite et moyenne taille et toutes se dotent d'un lien d'association communautaire. Nos caisses populaires désirent ardemment préserver non seulement leur nature coopérative mais aussi leur héritage linguistique et culturel en développant les forces économiques du milieu.

Étant donné que nous nous retrouvons pour la plupart la seule institution financière dans la communauté, nous avons la responsabilité d'offrir tous nos produits et



services dans les deux langues officielles du pays. Nous voulons continuer cette relation avec la communauté, mais avec une plus grande confiance que la loi pourrait nous accorder par une reconnaissance statutaire de nos origines francophones. Nous recherchons une protection du caractère distinct des caisses populaires qui nous permettrait de contrer l'assimilation de nos coopératives financières.

Tel que mentionné, nos caisses populaires sont majoritairement des petites institutions financières situées dans le nord de la province. Nous dépendons grandement de notre capacité d'agir en réseau afin d'atteindre la masse critique nécessaire pour investir dans la livraison des produits et services destinés aux sociétaires.

Le réseautage est critique à notre survie comme institution communautaire. C'est dans cette optique que nous avons créé des filiales coopératives qui ne sont pas dominées nécessairement par une caisse populaire ou credit union mais appartiennent à l'ensemble du mouvement coopératif, soit au niveau provincial ou national.

La notion d'influence n'a pas la même signification à cet égard. Ces filiales ont été créées pour répondre spécifiquement aux besoins de nos sociétaires. Il est donc d'une importance capitale qu'on puisse reconnaître ces filiales coopératives au même titre qu'un membre du même groupe dans le but de fournir une gamme complète de produits.

Nos caisses populaires affiliées regardent d'un bon oeil la possibilité d'émettre différentes catégories d'actions. Encore une fois, nous favorisons une approche réseau afin d'assurer que toutes les caisses populaires, peu importe leur taille, puissent bénéficier de ces mesures de capitalisation. L'accès à des marchés de capitaux permettra aux caisses populaires et credit unions de mieux se capitaliser durant les périodes de forte croissance et d'avoir accès à une autre source de liquidité pour alimenter les initiatives locales.

Les mesures de capitalisation prévues dans la loi permettraient également aux caisses populaires et credit unions d'investir dans des projets à long terme, tel que requis pour le développement technologique et des produits et services financiers, pour demeurer concurrentielles.

Cependant, nous demandons une extension de la période transitoire qui s'applique aux parts sociales. Nos caisses populaires exigent environ deux ans pour considérer les alternatives autres qu'une conversion des parts sociales actuelles à des dépôts. Advenant une décision de créer une nouvelle catégorie d'actions, les caisses populaires requerront une période raisonnable pour rencontrer les nouvelles exigences réglementaires établies par la loi et les communiquer aux sociétaires.

1720

L'assurance-dépôts devrait demeurer en vigueur durant la période transitoire pour ne pas créer inutilement et sans fondement un climat d'incertitude. Il est important que cette transition soit accomplie d'une manière ordonnée.

Le projet de loi prévoit également que les caisses populaires et credit unions assument le rôle de mandataire dans la prestation de certains services à ses sociétaires. À

première vue, il paraît que cette mesure créera des opportunités pour le mouvement pour participer de concert au développement régional par le biais de prêts syndiqués.

Cependant, la loi semble restreindre le consentement des prêts par les caisses populaires et credit unions à leurs sociétaires seulement. La loi doit pourvoir qu'un sociétaire puisse bénéficier de la syndication d'un prêt consenti par un groupe de caisses populaires ou credit unions affiliées au même réseau.

Je reviens souvent sur notre capacité d'agir en réseau. Nous aurons à faire preuve d'une plus grande solidarité au sein d'un réseau, soit au niveau régional, provincial et même national afin d'augmenter notre capacité de rejoindre avec encore plus d'efficacité les besoins locaux. À cet égard, les centrales et les fédérations ont un rôle à jouer en complémentarité avec leurs membres affiliés et non pas en compétition avec ces derniers.

Nos caisses populaires affiliées l'exigent de l'Alliance. Elles voudraient que leur fédération les supporte dans la livraison des produits et services destinés aux sociétaires. Elles réclament donc que les fédérations et les centrales aient les pouvoirs nécessaires pour transiger avec les sociétaires des membres affiliés au même regroupement.

Les caisses populaires comme agent de développement communautaire se préoccupent d'offrir les services financiers et contribueront à la survie des communautés ontariennes. Nous comptons sur une loi souple et progressive pour fournir les outils requis afin de jouer pleinement le rôle que les communautés attendent de nous.

Je vous remercie de votre attention soutenue. Maintenant, j'aimerais vous présenter mon collègue M. Joe Mahoney de l'association des credit unions de l'Ontario.

**Mr Joe Mahoney:** Thanks, Michel. Before I begin my remarks on behalf of the Association of Credit Unions of Ontario, I would like to introduce, sitting directly behind me, my colleague Johanne Brunet, of the Civil Service Co-operative Credit Society. The association is a wholly volunteer organization, and without the help of people like Johanne we could not take an active part in proceedings such as these.

The credit union and caisse populaire system welcomes Bill 134 and requests your endorsement of this new Credit Unions and Caisses Populaires Act. As some of you may be aware, it is not a common occurrence for the four organizations that represent the overwhelming majority of Ontario credit unions and caisses populaires to act in concert. However, there is support for this new legislation from all sectors of the credit union and caisse populaire system. As such, the Association of Credit Unions of Ontario is here today in coalition with the three leagues to demonstrate that support.

There was a time not so long ago when it took the intervention of the Minister of Financial Institutions to bring the four groups together in the same room. Now our need for new legislation to enable us to compete in the ever-changing financial marketplace has brought us together to ask for your support in passing into law the first new credit union act in 18 long and eventful years. During that period, credit unions and caisses populaires



weathered many storms but continued to prosper and grow, thanks to the great confidence shown by their members, the people who make financial cooperatives a reality.

Today, the credit union and *caisse populaire* system is very sound. We serve more than 1.8 million members in the province of Ontario and administer assets of \$12.5 billion.

In the five-year period from 1988 to 1993, while system assets grew from \$9.2 billion to the previously mentioned \$12.5 billion, surplus and capital more than doubled, growing from \$252 million to \$526 million. The system is much stronger now and better able to handle the increased competition from far larger financial institutions. But we need your help to give us the legislation required to stay in the game with our federally regulated competitors.

The Association of Credit Unions of Ontario welcomes the new legislation and supports the continuing importance given to financial soundness through Bill 134. The Association of Credit Unions of Ontario is a strong believer in financial stability. As a group, we administer assets of more than \$2 billion and have surplus in excess of \$100 million, or more than 5% of our total assets.

The new legislation clarifies roles and will clearly define rules for financial stability. The bill is long overdue, and we are extremely pleased that the government has permitted the industry to participate in the process.

Insurance retailing has become a hot topic whenever financial institution legislation is discussed. Many of our members look to their credit union or *caisse populaire* as a trusted source for insurance products. Although the proposed new act does not broaden the existing powers of credit unions and *caisses populaires* in this area, it does provide for flexibility. The proposed new legislation is versatile enough to permit a change that would mirror any changes in federal legislation which may permit the retailing of insurance through bank branches.

Bill 134 provides for such changes by way of regulation, changes which could be implemented quickly and easily to keep credit unions and *caisses populaires* on a fair and level playing field. To remain competitive, credit unions and *caisses populaires* must not be left behind if such a change is forthcoming.

Any change has casualties, as escalating costs force businesses to consolidate their assets. As noted earlier and as Mr Whitmell also noted, the system has experienced considerable growth in assets and members, but we have seen our numbers reduced. Some were victims of the recession, which resulted in plant closings which eliminated their membership base. Others did not have the asset size or a broad enough membership base to enable them to continue to operate, and many merged with larger credit unions or *caisses populaires*.

Increased demands on human and financial resources can have a detrimental effect on the ability of smaller units to continue to provide vital financial services in areas where larger financial institutions cannot afford to operate. Often credit unions and *caisses populaires* are run on a volunteer basis, the essence of the cooperative

movement. We believe the new legislation will benefit smaller credit unions and *caisses populaires* and make it easier for them to continue to serve their communities.

I might just make an aside here to mention that my position as president of the association is entirely voluntary. My day job is with the credit union that serves the employees of the Ontario government, where people like Harvey Glower are the men on the shop floor. Despite our large numbers, we care about our members and we're proud to lend qualified members any amount they may need, even if it is less than \$5,000.

Another item of concern to credit unions and *caisses populaires*, large or small, is the assignment of lending limits. Loans are the lifeblood of our business. Without loans, credit unions and *caisses populaires* would not exist. An arbitrary rollback of an existing limit, which is a possibility in many smaller credit unions and *caisses populaires*, would have a devastating effect on the ability of that credit union or *caisse populaire* to continue to compete and to effectively serve its community.

It is essential that Bill 134 grandfather all existing loan classes and loan limits which are currently provided for in the Ministry of Finance-approved bylaws of all credit unions and *caisses populaires*.

A final point, before I conclude, with regard to an issue that has put the Ontario credit union system at a competitive disadvantage since the inception of deposit insurance in Ontario in 1976. All financial institutions in Ontario, with the exception of credit unions and *caisses populaires*, are insured by the Canada Deposit Insurance Corp. Ontario credit unions and *caisses populaires* are insured by the Ontario Share and Deposit Insurance Corp, affectionately known as OSDIC.

From time to time, it is necessary for deposit insurers to borrow funds to meet their mandated requirements. When the CDIC borrows, it has access to the comparatively inexpensive resources of the federal consolidated reserve fund. OSDIC has no such access to the provincial consolidated reserve fund and is forced to operate at a deficit or to raise funds from the private sector at considerably higher cost than the CDIC. As Mr Guss noted earlier, this is a cost issue. The higher the borrowing cost to OSDIC, the higher the operating cost to the local *caisse* or credit union. We hope you will correct this inequity in Bill 134 and provide the Ontario Share and Deposit Insurance Corp with access to the consolidated revenue fund for its borrowing requirements.

We wish to thank the committee for permitting us to come forward and provide our members' views on the new credit union and *caisse populaire* legislation. I would now like to pass the mike to my friend Pierre Lacasse of la Fédération des *caisses populaires* de l'Ontario.

1730

**Mr Pierre Lacasse:** Thank you for this opportunity to appear before you. I would also like to take advantage of your translation services and make my presentation in French since, as you know, this is the language of most of our 200,000 members. As I'm the last one to speak today, I will try very much not to put you all to sleep—with the help of the translator, of course.



Permettez-moi de vous signaler la présence avec moi aujourd'hui du président de la Fédération, M. Benoît Martin, ainsi que du vice-président, M. Fernand Bidal, et du directeur, crédit et gestion de la Fédération, M. Daniel Brault.

À titre de représentant de la Fédération des caisses populaires de l'Ontario, il me fait plaisir de clôturer cette présentation des divers groupes de l'industrie en soulignant à mon tour certains aspects de ce projet de loi qui soit méritent du support, soit justifient quelques ajustements.

Permettez-moi d'abord de situer brièvement notre groupe, qui se compose de 43 caisses populaires réparties à travers la province dans quelque 63 points de services, et dont les actifs atteignent 1,5 milliards de dollars. Notre sociétariat provient très largement de la population francophone et, à ce titre, nos membres et nos dirigeants ont particulièrement à coeur les enjeux touchant la protection de notre héritage culturel.

Malgré que notre communauté soit aussi fondatrice de ce pays, je n'ai pas besoin de rappeler aux membres de ce comité sa fragilité face à l'assimilation à la majorité dans cette province et à la nécessité d'avoir l'appui des dirigeants politiques afin de développer les institutions francophones.

Les caisses populaires jouent un rôle unique à cet égard, mais le milieu hautement compétitif dans lequel les institutions financières évoluent rend doublement difficile le respect des impératifs financiers et communautaires. Pour que cette force économique qu'est le réseau des coopératives francophones puisse jouer pleinement son rôle dans la communauté, il doit obtenir que sa mission soit pleinement reconnue et protégée.

Nous sommes heureux de constater l'ouverture démontrée par le gouvernement en reconnaissant, à l'article 19, le caractère distinctif des caisses populaires. En limitant l'usage du terme «caisse populaire» aux seules institutions qui offrent une gestion et un contrôle démocratiques en français, nos membres pourront encore davantage s'identifier aux caisses populaires pour contribuer au mieux-être de la communauté francophone.

La seule requête que nous formulons consiste à amender le paragraphe (5) de cet article afin que toutes les coopératives existantes soient visées par cet article. Tel que rédigé présentement, le paragraphe (5) défait la protection accordée au paragraphe (3). Il s'agit, semble-t-il, d'une erreur de rédaction que le Ministère propose de corriger.

Un autre aspect important de cette réforme législative traite de notre développement futur. Nous avons besoin d'un cadre législatif souple qui reconnaisse la forme particulière que prennent nos investissements coopératifs. Afin à la fois d'assumer leur autonomie et de répondre aux besoins financiers de leurs membres, les caisses populaires et les credit unions regroupent leurs forces pour procéder en commun à leurs investissements stratégiques.

Peu, sinon aucune de nos coopératives financières peuvent se lancer seules dans des activités connexes. Conséquemment, pour nous permettre de lutter à armes

égales avec nos compétiteurs, notre loi doit favoriser la mise en commun des ressources en définissant un autre type de filiale, soit celle détenue par un groupe de coopératives. Cette forme de propriété intercoopérative n'a pas d'équivalent dans le monde corporatif. Il faut, comme dans d'autres provinces canadiennes, créer ces filiales coopératives, car tant du point de vue financier que fiscal, de tels organismes sont essentiels pour assurer notre développement futur. Ceci est particulièrement vrai à la veille d'une accélération du décloisonnement des services financiers.

Dans ce même ordre d'idée, nos coopératives ont aussi des besoins stratégiques en matière de distribution de produits et de services, puisqu'elles ne peuvent regrouper dans leur propre giron toutes ces activités. Elles ont besoin d'avoir accès aux produits d'autres coopératives ou sociétés, soient-elles filiales, affiliées ou non reliées, pour que les membres trouvent auprès de leur caisse populaire et leur credit union tous les services financiers dont ils ont besoin, exactement comme ils pourraient le faire avec une institution bancaire concurrente.

Il ne faudrait surtout pas penser que nos coopératives peuvent se contenter d'être des institutions secondaires occupant des niches spécialisées. Nous avons les mêmes impératifs technologiques et financiers que nos concurrents et, pour survivre, il faut être aussi performant.

Les articles 174 et 175, qui traitent des pouvoirs commerciaux, doivent permettre clairement à nos institutions de jouer un rôle dynamique, et ainsi distribuer les services financiers les plus variés possibles à leurs membres. Avec la disparition des quatre piliers tels qu'on les connaissait autrefois, les coopératives financières sont plus que jamais les seules alternatives aux banques et nos autorités doivent faire en sorte de les rendre les plus compétitives possible.

Laissez-moi maintenant traiter d'un aspect important qui affecte, lui aussi, grandement notre compétitivité, soit la sécurité financière du mouvement. Nous avons cherché depuis des années à trouver des moyens concrets pour améliorer cette sécurité financière. Vous êtes en mesure de constater les progrès immenses accomplis depuis les dernières années, mais il reste encore beaucoup à faire. Pour survivre, il nous faudra atteindre une plus grande discipline en matière de gestion financière afin de pouvoir jouer pleinement le rôle attendu par les membres au sein de nos communautés.

La sécurité financière dans notre monde coopératif passe, là encore, par des efforts concertés. C'est ce que nous appelons dans notre jargon la stabilisation. Il s'agit d'un mode de gestion axé sur des mécanismes d'entraide, où l'ensemble des membres d'un groupe supportent les unités plus vulnérables. En acceptant l'importance de resserrer la gestion de l'ensemble des membres de notre industrie, nous faisons preuve d'un degré de maturité remarquable qui résultera inévitablement en un système financier plus fort.

La récompense recherchée : des primes d'assurance-dépôts plus basses. Celles-ci sont présentement à des niveaux beaucoup trop élevés et elles minent notre compétitivité.

J'aimerais ajouter un commentaire suite à la présenta-



tion du président de la Société ontarienne d'assurance des actions et dépôts ce matin pour indiquer que l'industrie est en désaccord avec la perspective de préciser dans la loi le niveau que devrait atteindre le fonds de réserve d'assurance. L'approche actuelle de la loi nous convient très bien.

Ceci étant dit, certaines approches avancées dans la loi doivent être nuancées. Entre autres, il est injustifiable que l'assureur-dépôts soit responsable des fédérations. Elles reçoivent les dépôts de leurs membres qui paient déjà l'assurance-dépôts sur ces mêmes sommes. Une telle juridiction désavantage les caisses populaires et les credit unions affiliées à une fédération par rapport aux unités non affiliées. Elle accroît inutilement les coûts d'opérations, ce qui va à l'encontre de l'équité concurrentielle.

D'autre part, la loi donne de plus larges pouvoirs aux autorités réglementaires, mais cela ne devrait pas signifier que des abus puissent s'effectuer. Le directeur des caisses populaires et des credit unions peut accorder des dérogations à certaines unités en regard des différentes règles imposées par la loi ou par les règlements. En particulier, l'article 284 lui permet de placer une unité sous surveillance même si elle a accepté son plan de redressement, c'est-à-dire la demande de dérogation. Il s'agit d'un pouvoir exagéré qui rend inutilement craintifs nos membres face à des interventions réglementaires imprévisibles et abusives. Ceci va également à l'encontre des principes d'autoréglementation que la loi introduit.

Cette notion de surveillance utilisée dans la version française de la loi mérite d'ailleurs d'être clarifiée, car elle prête directement à confusion. Il est important que l'on comprenne que cette stabilisation du système est réalisée par étapes, avec des niveaux progressifs d'intervention, et que le vocabulaire propre à chaque étape doit véhiculer la bonne connotation.

Le terme «surveillance» réfère à une fonction plus générale que le terme anglais «supervision», qui évoque beaucoup plus justement une forme de prise en charge et de réduction des pouvoirs. Nous croyons que le terme «direction» affirme plus clairement l'intention et nous demandons qu'il soit utilisé pour remplacer le mot «surveillance».

Enfin, pour rationaliser l'approche réglementaire, le pouvoir de régir les organismes de stabilisation devrait se situer au niveau du ministère par prescription d'un règlement et non résider dans le pouvoir de l'assureur-dépôts.

Notre fédération est prête, avec le plein support de ses membres, à prendre en charge ces activités de stabilisation. Nous pensons que cette approche est la plus efficace et la moins coûteuse. Nous sommes heureux que les autorités réglementaires soient sensibles aux souhaits des divers groupes de l'industrie désireux de prendre en main de plus grandes responsabilités visant à instaurer graduellement l'autoréglementation dans les coopératives financières. Notez que cette approche est parfaitement consistante avec nos valeurs coopératives qui préconisent, entre autres, la responsabilisation des individus.

Je vous remercie de l'attention que vous avez portée à mes propos et à ceux des autres représentants de la Coalition des coopératives financières. Nous apprécions

aussi l'opportunité de nous exprimer dans notre langue. Nous avons investi beaucoup de temps et collaboré pleinement avec le ministère et le gouvernement pour construire cette nouvelle législation. Conséquemment, nous osons croire que vous recevrez positivement nos recommandations de modifications, puisqu'elles ne visent qu'à accroître le dynamisme de notre loi.

My colleagues and I will be happy to answer your questions, if you would please specify to whom you address those questions. Thank you.

1740

**Mr Owens:** I'd like to begin by welcoming the coalition to the standing committee and thank you for the good work you've undertaken with respect to Bill 134. I'd also like to fracture Canada's second national language by stating, j'aimerais vous souhaiter la bienvenue à ce comité permanent. Il me fait plaisir de voir tous les représentants ensemble ici qui appuient ce projet de loi. Vous devez être fiers de votre bon travail. Je voudrais féliciter chacun d'entre vous : M. Guss, M. Lacasse, M. Mahoney and M. Paulin.

With that, seeing there was no lightning coming down from those who watch these language—

**Ms Dianne Poole (Eglinton):** The translator fell off his chair.

**Mr Owens:** That's right. The translator is wondering which language I was actually speaking.

I'd like to ask Harvey Glower to respond to some very important issues raised, particularly by Messrs Pierre Lacasse and Michel Paulin. Before I do that, I'd also like to address the issues with respect to grandparenting—I guess we've been calling it grandfathering all day; I'd like to move it into the 1990s—and clarify that the grandparenting provisions of subsection 197(4) will be applied to lending limits as well as categories of lending. For any further explanation, I'll ask Mr Glower to comment on that or go directly to the stabilization issue.

**Mr Guss:** We're delighted to hear that. Thank you, Mr Owens.

**Mr Glower:** Hopefully, that doesn't need any more clarification, but let me address two or three points.

First, there's the issue with respect to "supervision" and "surveillance" in French. We are very well aware of the potential impact of the translation, and a couple of suggestions have been made to us. One is to use the term "en direction" or "sous direction" for the term "under supervision," and the verb "diriger" for the verb "to be supervised" or "being supervised."

We have made certain representations already to the francophone legislative counsel. We will be phoning them once again essentially to impress upon them the importance and stress that this is the accepted terminology we would like to see in the legislation. That will be done very shortly. They don't work as late as we do, so it'll have to wait till tomorrow.

The next question I wanted to address was an issue raised with respect to section 284. If I understood correctly, there is a particular feeling that maybe the power for the director to order a credit union to come under supervision, in spite of the fact that a credit union or caisse



populaire may have received a variation in capital requirements, is too strong.

It is our view that it's not a question of whether it's too strong. There are a number of situations where, in spite of the fact that a credit union or caisse populaire may have received a variation in capital, the nature of the problem that led to their requirement to ask for variation needs some other level of authority to look over or inspect or manage or co-manage, as the case may be. We want to make it clear that it is necessary to state that just because one has received a variation in capital, that does not continue to imply that one is now complying with the provisions of section 84.

I think OSDIC and Mr Poprawa this morning made it quite clear they wanted to ensure that a credit union could not continue to operate. I hope I'm not misquoting, unless it was under strict supervision or otherwise.

I'm not saying this is a response to that, but I think it's an indication that the deposit insurer and the regulator feel strongly enough that a variation in capital is not the answer, is not the clean slate; it's the first step in making sure that if supervision is necessary, there will be some form of co-management or curatorship to bring somebody out of the need to require variation in the future.

**Mr Guss:** Mr Chairman, is that a question we're expected to address?

**The Chair:** If you would like to make comments with regard to that at any time, by all means.

**Mr Guss:** Pierre?

**Mr Lacasse:** Not at this point. I'll be listening and maybe intervening.

**Mr Glower:** A third issue I thought I might look at is the one on subsidiaries. I believe two or three people made this comment, so I'm going to try to address everybody's concerns.

It's true that the bill does provide special rules for subsidiaries, and it is true that credit unions and caisses populaires do tend to own companies cooperatively or jointly with other credit unions or caisses populaires, a term we like to call a cooperative affiliate. We recognize that this is fundamental to the operations of a credit union. They do not survive today through the ownership of subsidiaries but rather through multiple joint ownerships of cooperative affiliates.

This is something that in a certain way has been recognized in the statute. There is a proposition to amend one section dealing with affiliates, but there's also a regulatory-making power which, for the purposes of the statute, would allow us to define what is a cooperative affiliate through the regulations. We know this is fundamental to the operation of credit unions. We cannot ignore it and we will not ignore it, because credit unions cannot operate without it.

In many cases, with respect to networking provisions, for example, credit unions will be allowed to network with subsidiaries, and we talk about "prescribed entities or persons." It is recognized that something like a prescribed entity that is a cooperative affiliate today is what credit unions are doing, and we intend to grandparent that notion right into the regulations.

If I may reserve the right, Mr Chairman, to come back to address other issues as I get my thoughts together, I'll stop there for now.

**The Chair:** By all means. Mr Owens, do you have any further comments or questions at this point?

**Mr Owens:** Not at this point.

**Mr David Johnson:** First of all, I would like to congratulate each and every one of you on excellent presentations. I'll do it in English only to spare you my French. Obviously, a great deal of thought has been put into this and a great deal of cooperation all the way around.

The point has been made with regard to the ability of OSDIC to access funds from the consolidated revenue fund. Mr Guss, you made that point. I'm not so sure that question has been addressed yet. Am I correct that it hasn't been?

**Mr Guss:** That's right. As I understand it, there is no change in the proposal with respect to OSDIC and its funding. We very much feel that it's a competitive issue and a practical one. We recognize that it can be dealt with without being in the act—in other words, OSDIC can arrange a line of credit from the CRF even if it's not in the legislation—but from our perspective, it should be explicit in the legislation, it has to be, for competitive issues. We are seen in the marketplace in a certain way. We have to be able to say, "Our protection is similar to that of other financial institutions." Also, there's the cost issue that was raised. It has to be absolutely clear to the Ministry of Finance officials that a line of credit for OSDIC was contemplated by the legislators. We don't want OSDIC to have to go in and negotiate it without it being in bold print in the legislation.

1750

**Mr David Johnson:** Perhaps with those thoughts we could turn to our good friend Harvey.

**Interjection:** Try the PA.

**Mr David Johnson:** Is this is more in the political vein? Mr Guss is saying it's important that it was contemplated by the legislators that OSDIC could access the consolidated revenue fund. Is that what was contemplated by the legislators?

**Mr Owens:** I'm not sure I was around when the credit union act was first—

**Mr David Johnson:** I don't think we're talking history; we're talking today.

**Mr Owens:** In terms of the issue with respect to the consolidated revenue fund, this has certainly been an issue of discussion both on the ministry level and in terms of the policy issues. At this point, the commitment I'm prepared to give on that, as I gave to Andy Poprawa this morning with respect to OSDIC and the 1% solution, is that we are prepared to continue to work with the coalition and work with OSDIC to come up with a mutually agreeable solution. I don't think there's any evidence to the contrary that the government does stand behind credit unions.

The question we are trying to resolve in conjunction with the credit union and caisse populaire movement as



well as OSDIC is how best to ensure, first of all, solvency, so we don't have to get into the OSDIC or move into rescue mode; and also, if that does have to happen, what is the best way of doing it? What is the best way to protect depositors? The question is also, how can we work with the coalition and others to promote the safety and the viability of credit union deposits? We're continuing to work with the movement on those questions.

**Mr David Johnson:** I guess the question is, when does that come to a head? Maybe you'll address that later. In the presentation there's another question with regard to OSDIC, and it might be well to clear the air on that as well, the question with regard to providing financial assistance to a league for insuring deposits with the league. Mr Guss, your position is that OSDIC should not be responsible for doing that.

**Mr Guss:** That's right. It's our view that OSDIC has expertise and a mandate to work directly with credit unions. The leagues, however, do not pay an assessment or premiums to OSDIC for insurance and our deposits are not guaranteed. As well, their expertise is not in working with leagues. So we think it would be a mistake to have them play the role of the organization that would step in if the league did face financial difficulty.

There is a national Central which has expertise in everything that the leagues do, and it would be one of the possible candidates to step in and help out. As we have a line of credit from them and they have a line of credit from the Bank of Canada, that's a sensible place to turn.

If the provincial government wanted to appoint some entity to work with us, it should appoint somebody with the expertise in the wholesale financial markets, which is where we are active, as a central banker. We think it's very important that that be changed.

We've also made some suggestions about what role OSDIC could play; that is, if the provincial government did give a line of credit to a league to see it through a rough period, OSDIC could administer that line of credit. That mirrors the federal act, under which we also operate. Our Central is a hybrid organization. We operate under both federal and provincial legislation, and under the federal act the CDIC can administer a loan from the federal consolidated revenue fund to our Central, so we'd like to see OSDIC play a similar role at the provincial level. I won't go into more detail; it's fairly arcane and legalistic. But I appreciate the opportunity to comment on it.

**The Chair:** Mr Glower has indicated to the Chair that he would like to make a comment on this issue.

**Mr David Johnson:** So that's your first name. We just knew you as Harvey.

**Mr Glower:** Everybody calls me Harvey.

There are a couple of points Mr Guss raised. First, with respect to the duplication of insurance on deposits, I don't think either the ministry or OSDIC would argue that we shouldn't be double-insuring the same deposit. In other words, the member places his or her money with the credit union and that's where the deposit is insured and that is the level at which the deposit insurance is paid. Obviously the credit union, either through membership requirements or through excess liquidity, redeposits

that money into the league and then the league subsequently invests it. It would not make sense to double-insure that.

However, by virtue of the fact that leagues do invest moneys of the depositors within the financial marketplace, just as credit unions invest those depositors' money and incur a level of risk with their activities, leagues concurrently incur a level of risk with their activities. For the purposes of the statute, a credit union and a league are treated similarly. We think there must be a certain level of consistency within the regulation such that leagues and credit unions are administered both by the ministry and OSDIC in the same way.

The ministry still is the primary regulator of all three leagues, and to the extent that there is a problem with credit unions there is now a mechanism whereby those problems are to be addressed, first by the ministry and/or OSDIC concurrently, and we think that consistency should be applied to leagues.

Certainly where Mr Guss says that there is a link with the CDIC because Credit Union Central of Ontario is a quasi-regulated Central, if that's an appropriate term, if the CDIC could grant a loan through its line of credit, surely they would have some form of monitoring associated with that. At least two of our leagues, and, because Central is first incorporated in Ontario, all three leagues would have a similar relationship. If they were to receive some moneys from their deposit insurer, surely their deposit insurer would need some kind of monitoring to, first, determine that financial assistance was available, and then be able to attach some conditions to the financial assistance.

I don't think it's totally inappropriate that OSDIC's responsibility for leagues is in the statute. There are different ways of addressing the costs associated with that and it does not have to be through deposit insurance premiums. There are differential premiums for leagues and for credit unions, and there are different classes of credit unions and therefore there can be different classes of leagues. There are different mechanisms of addressing those issues.

**Mr Guss:** I don't want to address all those issues because time will pass and we won't accomplish our ends, so I don't think we should get into a debate. I just want to say that there is a difference between monitoring and managing. I would repeat that OSDIC has the expertise to manage a credit union but it doesn't have the expertise to manage a Central, with its broad scope of very different activities. I think the act should be changed to permit them to monitor if we borrowed from the consolidated revenue fund; that they can monitor. But the ministry, as a regulator, should choose someone with the expertise to manage a league, if it came to that.

I want to say that the leagues are all operating very soundly now and this isn't by any means an immediate issue. I think I should leave you with that very positive thought. We're all well capitalized and running very well.

**Mr David Johnson:** One last question, just a simple one about deeming everyone to have the licence. Has that issue been handled? You made the comment that all the current members should be deemed to have their licence.



**Mr Lacasse:** It seems, from what I understood, that the present licences, the level of limits, actually, would be grandparented. That's one aspect that seems to be positive.

We still have a problem with the fact that our units are submitted to licensing in some areas like consumer lending, because we would not expect a financial institution not to make loans. I mean, this is our basic business. We've been in that business for years now and doing it, I think, properly.

What the coalition agrees upon is that those licences should be required for commercial lending, because this is a new area. Although we've been involved in this area, in the past we've been involved on a limited basis. The maximum percentage of our assets that we can have in commercial lending right now is 15%. The new legislation will allow us to go further than that and participate more in the economic development of our communities.

Therefore, because it's a new area and because we still have to develop more expertise, we agree on that basis that there should be licences for commercial lending and possibly agricultural lending. But for the other aspects, we think it's bureaucracy and it should not be mandatory.

**Mr Paulin:** I just wanted to reiterate Jonathan's comments. We've proven our ability in making consumer loans, and the experience has been there. As Mr Lacasse mentioned, commercial loans require a higher level of expertise, and in that case the lending-licence regime would be appropriate.

**Mr Guss:** Your question was, have we got what we asked for? The grandfathering could in a way solve the problem. To be nice, I'll say that after we've seen the grandfathering clause, maybe we'll say it's taken care of. But I suspect that this is a different issue, and it's a very important one to the small credit unions because their natural business is personal lending. You have to ask, why do you need a licence to do what you were created and given a button, letters patent, to do? But it's there, and we thought it would be a good one for the small credit unions.

**The Chair:** M. Paulin, M. Lacasse, je vous remercie de votre présentation aujourd'hui. Mr Guss, Mr Mahoney, thank you very much for making your presentation this afternoon.

**Mr Guss:** Mr Chairman, we do have a short closing statement, if I might.

**The Chair:** By all means. I haven't adjourned the

committee yet. If you'd like to make a very short statement, all the committee members are anxious to hear that.

**Mr Guss:** We understand many of you leave on Thursday night, so this one's only 14 minutes.

Credit unions and caisse populaires operate, I think you can tell, in an extremely competitive environment. Despite the legislative impediments, we're equal players with the banks and trusts in the Canadian Payments Association and in the Interac electronic banking system. We have people on the boards of both of those organizations.

We provide trust insurance and data processing services. We have a mutual fund company, and through our cooperative affiliates that we've created, we've managed to deliver all these things directly to our members. Our businesses have survived and in fact flourished.

We need the new legislation now. The banks legislation was changed in 1980 and again in 1992, and the federal trust and insurance legislation was changed significantly in 1992. Our current legislation is hopelessly out of date, and it makes it much more complicated for us to compete. It gives our competitors a clear competitive advantage.

In general, our system has matured tremendously. We've repeated that in different ways. For instance, we are among the bankers to the federal government. Our management is sound and it's increasingly well trained, but it remains very responsive to our local communities, to our members.

We are engaged in a business with inherent risks, but despite this, our system's financial performance has improved dramatically in the past five years, even during the recession, with system capital increasing, as I said earlier, from 2% to 4% of assets.

The legislation that the government has presented to you is excellent legislation, and we truly welcome it wholeheartedly. With a few changes recognizing the uniqueness of our co-op structure and making it more practical, you can make it model legislation. We encourage you to agree to do that in your deliberations.

**The Chair:** I thank the coalition for making its presentation here this afternoon.

This committee stands adjourned until Thursday next at 9:30 am. Please be prompt. Our schedule is tight.

The committee adjourned at 1805.

## ERRATA

No.	Page	Column	Line
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			39
			43
			50
	F-1315	1	25

### Should read:

**Ms Atcheson:** I think that question should be answered  
**Ms Atcheson:** The bill requires—I may not get the  
**Ms Atcheson:** —an offering statement which has regula-  
**Ms Atcheson:** I think probably the fair answer to that is  
**Ms Atcheson:** I think you've put your finger on some-











## STANDING COMMITTEE ON FINANCE AND ECONOMIC AFFAIRS

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\*Sutherland, Kimble (Oxford ND)

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### **Substitutions present / Membres remplaçants présents:**

Duignan, Noel (Halton North/-Nord ND) for Mr Sutherland

Elston, Murray J. (Bruce L) for Mrs Caplan

Owens, Stephen (Scarborough Centre ND) for Mr Wiseman and Mrs Mathysen

### **Also taking part / Autres participants et participantes:**

Ministry of Finance:

Campbell, Terry, manager, policy coordination, financial services policy branch

Glomer, Harvey, manager, financial and business standards, credit unions and cooperatives branch

Owens, Stephen, parliamentary assistant to the minister

Savage, Lawrie, superintendent of insurance

Smart, Joan, vice-chair, Ontario Securities Commission

**Clerk / Greffière:** Mellor, Lynn

**Staff / Personnel:** Campbell, Elaine, research officer, Legislative Research Service

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## Legislative Assembly of Ontario

Third Session, 35th Parliament

## Assemblée législative de l'Ontario

Troisième session, 35<sup>e</sup> législature

# Official Report of Debates (Hansard)

Thursday 19 May 1994

# Journal des débats (Hansard)

Jeudi 19 mai 1994

## Standing committee on finance and economic affairs

Financial Services Statute Law  
Reform Amendment Act, 1993

1994 Ontario Budget

Chair: Paul R. Johnson  
Clerk: Lynn Mellor

## Comité permanent des finances et des affaires économiques

Loi de 1993 portant réforme  
de diverses lois relatives  
aux services financiers

Budget de l'Ontario de 1994

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## LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON  
FINANCE AND ECONOMIC AFFAIRS

Thursday 19 May 1994

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DES FINANCES  
ET DES AFFAIRES ÉCONOMIQUES

Jeudi 19 mai 1994

The committee met at 0935 in room 151.

FINANCIAL SERVICES STATUTE LAW  
REFORM AMENDMENT ACT, 1993  
LOI DE 1993 PORTANT RÉFORME  
DE DIVERSES LOIS RELATIVES  
AUX SERVICES FINANCIERS

Consideration of Bill 134, An Act to revise the Credit Unions and Caisses Populaires Act and to amend certain other Acts relating to financial services / Projet de loi 134, Loi révisant la Loi sur les caisses populaires et les credit unions et modifiant d'autres lois relatives aux services financiers.

CANADIAN LIFE AND HEALTH INSURANCE  
ASSOCIATION INC

**The Chair (Mr Paul R. Johnson):** The standing committee on finance and economic affairs will come to order. We are continuing with our deliberations on Bill 134 and we will immediately proceed with our first presenters this morning, Canadian Life and Health Insurance Association Inc. Mark Daniels is president. If you would come forward, make yourselves comfortable and please identify yourselves for the purposes of the committee members and Hansard.

**Mr Mark Daniels:** Good morning. My name is Mark Daniels, I am president of the Canadian Life and Health Insurance Association.

Joining me today is Mr Ron Meredith-Jones. Mr Meredith-Jones is president and chief executive officer of the Prudential of America Life Insurance Co (Canada). He chairs the CLHIA's task force on the regulation of market intermediaries. This is a group that the association brought together to respond to the government's life agent reform proposals. His comments will focus on the life agent aspects of Bill 134.

I'll begin by making a few comments on the credit union reform provisions concerning insurance retailing and on the proposed amendments that concern farm mutual insurance companies. We'll be brief, relatively speaking.

**The Chair:** You have half an hour, during which time you may make your presentation and we'll expect some questions.

**Mr Daniels:** Life and health insurers are very aware of the important role credit unions play in the financial and economic life of the province. Indeed, their contribution by way of innovation in product design and delivery far outweighs their impact in straight dollars-and-cents terms. Perhaps their greatest value lies in providing an alternative to the mainstream deposit-takers.

Therefore, we are pleased to see that their corporate powers are being modernized to allow them to compete on a level playing field with other deposit-takers. One aspect of this modernization process is of particular interest to insurers, namely, the insurance business activities of credit unions.

In this vital area we strongly endorse the government's announced intention, which is reflected in the legislation and in the draft regulations which have been made available to us, to put in place a regulatory regime that is equivalent to the federal model. That is, Ontario credit unions will be able to do as much as, but no more than, their federal counterparts in the area of insurance retailing.

This will offer credit unions a much greater role in the sale of insurance products than they are currently permitted. At the same time, by not attempting to give Ontario credit unions greater powers than their federal counterparts, the proposal avoids setting a dangerous precedent which would definitely, and swiftly, lead to similarly expanded powers being granted to the major chartered banks. Ontario credit unions would quickly see any advantage nullified. This development would also threaten the continued existence of an independent insurance industry acting as an alternative source of financial products in competition with the big banks.

We would also like to commend the minister and his staff, and in particular Beth Atcheson, for their professionalism in conducting a fair and open consultation process that responded to the concerns of the insurance industry. It was a good process. We had free and open access, and we appreciated that. The resulting compromise in all of that process, from our point of view, seems to be one that everybody can live with.

With respect to the farm mutual amendments, just a word. On the whole, we commend the proposed amendments to the Insurance Act that would allow farm mutual insurance companies broader powers to hold subsidiaries. Given the competitive pressures they face, a modern legislative framework is absolutely essential.

For that same reason, we are rather disappointed to note that equal treatment was not given to all Ontario-chartered insurance companies. This concern takes on an added dimension in view of the recent budget announcement that loan and trust corporations are also to be given new lending and investment powers.

We're worried that it's unfair that those Ontario-chartered insurance companies that are not farm mutuals are really the only financial institutions in the province

that will be left under legislation that has not been significantly reformed since early in this century. After all, the federally regulated insurance companies with which they are direct competitors already operate under modern legislation.

Given the apparent lack of recent progress on the ministry's insurance legislation reform project, Bill 134 represents perhaps the sole immediate opportunity this century to give these insurance companies the tools they need to survive in an increasingly competitive world. We would urge the government to amend the act to extend the treatment proposed to farm mutuals to all provincial insurance companies.

Also, while the Insurance Act is opened up for the farm mutual amendments, we want to suggest the government consider one further amendment.

We would like to ask that the Ontario act allow companies to elect either an October 31 or December 31 year-end for filing purposes. This would bring the regulations governing provincial companies in line with federal legislation and would avoid the extra and unnecessary costs of preparing two statements.

To put this in context, all but six life and health insurance companies currently doing business in Ontario are federally chartered, so we've got this little rounding error on the outside that it might be helpful to reach out and deal with.

With your permission, sir, I'd like to ask Mr Meredith-Jones to make some comments on the life agent reform proposals themselves.

**Mr Ron Meredith-Jones:** Good morning. Mark mentioned that I chair a task force which is the industry's focal point for dealing with life agent reform. As many of you know, dialogue on this important issue has been going on for several years.

Given the many difficult issues that reform encompassed, the proposal as it stands is a testament to the hard work of many people, not the least of whom is Superintendent Savage.

In discussing the life agent reform proposed under Bill 134, our remarks must of necessity focus on the proposed regulations that will be enacted under the act rather than on statutory amendments themselves. This is because the bill itself only sets out the framework for reform. With three notable exceptions, the life and health insurance industry endorses the life agent reform model and would urge the government to proceed to implement it.

The first exception deals with replacement disclosure, that is, how best to protect the public in cases when a salesperson has recommended that a consumer purchase a new life policy to replace an existing policy. I want to take some time to explain why this is such an important issue for consumers and why life and health insurers think that the government's proposal in this area will not provide consumers with the protection they deserve.

Currently, when a replacement has been recommended, the salesperson is required to complete a disclosure form. The form provides a side-by-side comparison of key attributes of the new and old policies: the amount of coverage, premiums and certain values. It also provides

advice about the process: Don't cancel your old policy before the new one is in force. It discloses information about statutory clauses that would limit coverage in certain circumstances.

We've been working closely with other organizations, the LUAC in particular, to improve this form and, as reflected in the favourable comments made recently by Superintendent Savage, believe we have made significant progress in improving the disclosure this form provides. This is not our area of concern.

Under current regulation, signed copies of this form are sent to both insurers. More specifically, both the new and the old companies are given an opportunity to review both sides of the transaction. This is where our concerns lie. Under the proposals put forward by the government, only the new insurer would receive the completed form. The old insurer would receive only information about the old policy.

Why is this a concern? I'll start by dispelling a myth that was, I hope, inadvertently presented to this committee at an earlier hearing. The myth is that our interest in replacement regulation is motivated by a desire to place bureaucratic obstacles in the way of replacing old policies. The implication was that replacement regulations serve the interests of the replaced company, not the client. We disagree strongly with this view.

First, replacement involves two companies: the replaced company and the replacing company. Our members find themselves from time to time in one or other of these positions. Our concerns reflect a viewpoint expressed regardless of whether they're the replaced company or the replacing company.

Second, our members do not oppose replacement. In many cases the only way to serve the client's changing needs is to change the policy. A review of our members' practices would indicate that arrangements are widely offered which allow such transactions to take place on a very favourable financial basis to the client within the same company. Indeed, the principles of life agent operations of our association require agents to review the possibilities of such opportunities if they recommend a replacement.

What we oppose is systematic replacement of policies in circumstances which serve the agent's needs at the very considerable expense of the client. The side-by-side disclosure sent to both companies provides an invaluable opportunity, and currently our primary opportunity, to detect and deal with such situations.

Such replacements are a concern in our industry. However, we believe that side-by-side disclosure has contributed significantly to minimizing the frequency of these occurrences. It keeps the transactions transparent. We agree that there may be other ways to deal with this problem and will lend our full support to developing them. Until then, we strongly urge retention of full disclosure to both insurers.

Next, the life insurance council: One of the most important aspects of the life agent reform proposals is the creation of an insurance council. The life and health insurance industry strongly endorses this initiative and



looks forward to working with the government to make the council a success.

One very important issue concerning the council has not been resolved. This concerns the fundamental question of the council's composition, that is, who will act as council representatives.

A council is sometimes referred to as a government by peers, that is, insurance salespeople governing themselves. In fact, in the course of one of the earlier presentations on exactly this point, the spokesperson saw the issue as one of finding the right balance between different types of agents and other salespeople.

Such a view, however, is much too narrow. Given that the council will be responsible for setting and enforcing the rules that govern the marketplace behaviour of insurance salespeople, the council itself must be representative of the three key stakeholder groups: consumers, companies and the salespeople themselves.

For their part, companies have an important and ongoing role in training and in influencing the conduct of their salespeople in the marketplace. This fact is recognized in several aspects of the government's life agent reform proposals, which explicitly make companies responsible for the conduct of their representatives. Their interest in ensuring that consumers are well served in the marketplace is as great as that of the salespeople themselves. Quite simply, the companies' very existence depends on this being so.

For this reason, companies are well represented on various councils already in place in several Canadian provinces. Indeed, they share an equal voice with the sales force on these councils. We urge the government to keep in mind the contributions that the companies can make and also of their responsibility to their customers when considering what the composition of the council should be. Companies must have a significant voice at the council table.

As a related issue, we would strongly urge that the council be kept to a manageable size. In conversations with officials, references have been made to a council with as many as 15 members. Based on our experience in other provinces, a council of this size would be so unwieldy as to be totally impractical. It would also be very expensive.

The government might wish to consider Alberta as a model. The Alberta council has two agent representatives, two company representatives and two consumer representatives. By all reports, the Alberta council seems to work well.

Finally, holding out: I would like to speak to a very important issue that Superintendent Savage also raised in his remarks to this committee, that of holding out. There are many titles or designations that life insurance salespeople might use to hold themselves out to the public.

Either in regulations or in the proposed code of ethics, there should be a requirement that intermediaries accurately disclose both their contractual relationship with the firm or firms they represent and the nature of this representation. Also, there must be some reliable method of ensuring compliance so that consumers are not misled.

The concerns of insurers and the interests of the consumers coincide perfectly on this vital point. Insurers, therefore, look forward to working with the government in developing appropriate standards and procedures.

Mr Chair, committee members, this concludes our formal remarks. We'd be pleased to answer any questions.

**The Chair:** Thank you very much. We have five minutes per caucus. We'll start with Mr Phillips.

**Mr Gerry Phillips (Scarborough-Agincourt):** I'll start, and then I think my colleague—this is to Mr Daniels. You said there are six provincially regulated insurance companies that you would like to see accommodated in the legislation. Maybe the question really should be more to the staff or to Mr Owens, whether that's a possibility as we move forward on this legislation.

**Mr Stephen Owens (Scarborough Centre):** I'm sorry. I missed the first part of your question.

0950

**Mr Phillips:** Mr Daniels's comments earlier were that there are six provincially regulated insurance companies whose concerns he felt we should be trying to accommodate in the legislation. I just wondered if there's a reason why we wouldn't try and do that.

**Mr Owens:** Just let me very quickly respond. I was going to ask Mr Savage to respond in more fulsome detail on some of the issues like the council and representation and things like that, but what I will do then is ask Mr Savage to respond.

**Mr Lawrie Savage:** The question of the required filing date for the annual statements is something that could be dealt with. As you might imagine, there's a long, long list of things relating to the Insurance Act that could be dealt with and could be done to tidy things up. It's a piece of legislation that really hasn't been brought up to date and modernized in any extensive way. There was a major study done of the Insurance Act, the Insurance Legislation Review Project, which came up with some 220 recommendations for change. At some point many of those things such as the filing date were going to be considered.

This package deals with life agent reform, and for that reason we didn't address the question of the filing date for the annual statements. It's not something that we would have any major policy problem with. It's just one of the things that wasn't addressed because it wasn't part of life agent reform.

**Mr Murray J. Elston (Bruce):** Perhaps I could ask a couple of questions. I'm interested, and this has always been an interesting problem, I think, for us, with respect to the companies and sales of product. You do so through agents. The question always is, who is responsible for the agents? I guess either of you, Mark or our friend from Prudential, could tell us whether you feel responsible for the activities of your agents, or are you prepared to have the government assume all responsibility for dealing with the public?

**Mr Meredith-Jones:** Under the present regulations, we're responsible for sponsoring the agent and we take



responsibility for their actions in the marketplace. Under the proposed regulations, we would continue to sponsor agents for a two-year period. After that, we would take responsibility for the agents with respect to the transactions they have with our company. I think this is absolutely vital to the industry, and we're prepared to do it. There is no dispute on that issue.

**Mr Elston:** I have an interesting problem which has come to my attention, that is, the sale of a company's product some time ago which was a policy where the holding out by the salesperson was that, if you paid for a certain number of years, at a certain stage the payment of all future premiums would disappear. In fact, what you end up doing is front-end-loading the payments, and the interest that is accumulating, presumably, on those premiums paid would be sufficient to pay out for the rest of the life of the policy.

This person has just now recently received a bill for some \$800. Because the interest rates have declined, the undertaking has not really fulfilled the needs of the premium that is required to keep the policy current. The agent now has severed relationships with the company, the person who held out that no more premiums would be payable after a certain time. The company is refusing to deal with the client on the basis that, "Well, that was the agent." What would you do in a circumstance like that?

**Mr Meredith-Jones:** In that circumstance we would sit down with the client, find out what happened, and if what you suggest is in fact the case, we would stand behind the contract and make good.

**Mr Elston:** That really does come to the heart of the issue, because people do move from one client base to another and it really has to be seen, I think, that the person who is making the sale for the company is going to be stood behind. But that isn't always, I think, the case.

In this particular case, the company has refused to speak to the customer, saying: "This was our product. We don't care what was basically said to you. Besides that, the agent is no longer with us." It's not how I understand most companies work, but I wanted to make it very clear that there is a real connection between the companies and their sales force, to make sure that there is integrity in the chain of command. Because the client of the agent is also the client of the company, it seems to me, and I don't know how anybody could sort of wash their hands of an obligation to the customer base.

**Mr Meredith-Jones:** I can't speak for that company, but in our support for the legislation that's proposed, first, we are willing to take responsibility for our agents. We've had a number of conversations with Superintendent Savage, in fact, about how to strengthen this. Second, what you've suggested is right in line with our concern about adequate representation on the insurance council. That's the area where we can set industry standards to deal with the kinds of concerns that you suggest.

**Mr Daniels:** May I just add parenthetically, Mr Elston, perhaps you could be in touch bilaterally with my office, because we have a procedure inside the CLHIA to deal with issues that end up spilling over. At the end of the day we don't have a perfect fix for these things, but

we do have procedures that will at least vet the process and on occasion, indeed frequently, can bring about a resolution of a problem; not always. But let me just make that offer, because it's important that we reach out in instances like this and deal with our clients.

**Mr Elston:** I very much appreciate that.

**Mr Owens:** As well, Mr Elston—I'm presuming it's a constituent—if your contact is willing to contact either my office or Mr Savage's office, we'll go forward on that on that person's behalf.

**Mr Elston:** I was just hoping I might have one more question since the parliamentary assistant used some of our time.

**The Chair:** Actually he didn't. I've been keeping close tabs on the time and you've actually used more than you're allowed.

**Mr Elston:** I was just going to ask the question about how the continuing education requirement—

**The Chair:** I know you'd like to, but we're going to go to Mr Johnson.

**Mr David Johnson (Don Mills):** Just going back to the filing situation, and there was some exploration of that, it appears as if the government is saying it might be handled, although this wasn't the purpose of the bill, so they're probably not going to handle it. Could you give me some idea as to the cost associated with having the two different filing dates, having to make two different statements? Can you give me a pricetag on this?

**Mr Daniels:** I don't have a precise pricetag, Mr Johnson. I do know that where companies run into having to keep two sets of books, it turns out to be more than a modest nuisance in some cases. We were simply reaching out in that case because it was—the superintendent's quite right; there's quite a list of stuff out there. This one showed up because it's of particular concern to a subset of the companies, but I can't give you a precise cost number on this. I simply don't have it and I wasn't provided with it.

**Mr David Johnson:** Maybe this is something the staff could answer more accurately, but you've undoubtedly discussed this with the staff. I wonder if you have any sense of the complexity of making this change. Is this a simple change or is this a difficult one?

**Mr Daniels:** As far as I know, sir, it's a relatively simple change. You would not be surprised, Mr Chairman and your committee, to hear that this whole issue of harmonization, to try where possible to get homogeneous regulations for the companies, is a theme that finds its way into all the forums like this, and not infrequently you hear us come up selectively.

Given half a chance, we'll bring out our little litany, but it's a non-trivial matter because effectively what happens to the life insurance companies is we have to operate in Canada under 11 different sets of regs. They differ measurably and markedly by jurisdiction. It's not surprising that where we can seek parallelism without compromising the public policy goals of the jurisdiction in question—and this is not a public policy issue as far as we can see—that we're reaching out to it.

**Mr David Johnson:** I have a great deal of sympathy



for you and I would only say that—perhaps this isn't the forum right here today—I would welcome your litany, and perhaps you could direct it to me.

**Mr Daniels:** You may have opened up a door, Mr Johnson.

**Mr David Johnson:** I'd just like to see it.

Secondly, going on to the issue that was raised later about replacement disclosure, I seem to recall reading somewhere about the possibility of disclosure at time of sale. I don't think that's exactly what you are proposing here today, is it?

**Mr Meredith-Jones:** We're dealing with a specific type of sale, a sale which involves replacement of an existing policy.

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**Mr David Johnson:** Right. I'm still somewhat new at this whole issue. Dredging back, I seem to recall having read somewhere that it was a view of some party that the easiest way to deal with this was simply to have full disclosure when the policy was sold in the first instance.

Then the individual involved, the consumer, would have that, and if a new policy was proposed to replace it, the consumer would have disclosure of the new policy and would be able to compare the two, having the one in hand and the other, the replacement, given to him or her. Is that a concept that has any merit?

**Mr Meredith-Jones:** Certainly our industry is taking action to improve disclosure to the client. In fact, we have a task force working on this very point. Since many of the policies that would come into question in the case of replacement were sold many years ago, before any such regime could come into place, it would be many years before we would have a block of old policies with that type of form in place.

One would also have to say that with a form that was put together 20 years ago, you couldn't cover all the situations that would come up over 20 years or the disclosure form would become longer than the policy. I would favour continuing to require a disclosure form. I believe that the kind of disclosure at the point of sale that was suggested would be a step forward, but I don't think it would make replacement regulation unnecessary.

**Mr David Johnson:** Your proposal is to continue with the side-by-side, I think is what you call it, comparison.

**Mr Meredith-Jones:** Yes.

**Mr David Johnson:** You express some fairly earnest concerns if that is diluted, but I'm just not exactly sure, perhaps you could explain to me again what they are. Is it that there would be a quite a raft of replacements and the consumer wouldn't be in a good place to compare?

**Mr Meredith-Jones:** The kind of replacement we're concerned about—I described this—is where the replacement is to the advantage of the agent rather than the client. Many of our products are sold with substantial loads in the early years. Replacing the policy is a cost to the client. There's also a value to the agent. The kind of replacement we're concerned about is the type where an agent who perhaps may have been with company A and

gone on to company B, without looking after the client's needs, will go out and systematically replace the policies that he had previously sold with the other client.

**Mr David Johnson:** Does the word "churning" apply?

**Mr Meredith-Jones:** "Churning" is exactly the word that applies, sir.

**Mr David Johnson:** Now, putting—

**The Chair:** Mr Johnson, I'm sorry, but we're running very short of time.

**Mr Owens:** Just very quickly, Mr Meredith-Jones and Mr Daniels, thank you for your presentation. I want to tell you that I quite appreciate the thrust of your presentation with respect to consumer protection.

I think that you were quite diplomatic, Mr Meredith-Jones, when you indicated that this dialogue has been ongoing for several years. I think the number 40 comes to mind. I'm quite pleased that I myself and my government are able to bring these changes to fruition for you.

I want to ask a question on the issue of replacement business. As Mr Elston related his story, I thought that sounded surprisingly familiar on a personal basis. But I haven't received the letter from my insurance company about interest rates yet, so I'll be watching.

**Mr Kimble Sutherland (Oxford):** I'm waiting too.

**Mr Owens:** You may be receiving a few calls.

**The Chair:** I might remind the members that there's only about a minute left.

**Mr Owens:** In terms of the format in which we've set out the requirement for disclosure and in terms of the code of ethics, and, again, the responsibilities that you've outlined that you feel you have as a result of a duty of care, is this not going to provide a high level of protection for the consumer?

In terms of the issue with respect to confidential information, there may be a reason, in my view, that I may not want to have information going to the agent who sold me my policy. Would that not cause even further problems with respect to the replacement business?

**Mr Meredith-Jones:** Your first question I think related to, do I think that some of the standards, some of the proposals made in the LARP recommendations provide additional protection to these situations? The answer is clearly yes. As we develop codes of ethics and as we put practices into place, I think this is going to strengthen the regulation. Indeed, many of our members have communicated with Mr Savage and others to propose that these very steps take place. Will they remove the need for the side-by-side disclosure? I'd rather reserve judgement until we've had some experience with it.

**Mr Owens:** The other point that I would like to make is that these regulations, particularly with respect to your sector, are still in development and your suggestions around filing dates and the counsel's suggestions are noted by Mr Savage and ministry staff. We look forward to working with you, particularly as we move into clause-by-clause, if there are suggestions that need amendments. Mr Savage, would you like to comment?

**The Chair:** Mr Owens, I'm afraid our time's past expired.



**Mr Elston:** I think any time that Mr Savage particularly, or any one of the regulators, has something to add, it will probably help us.

**The Chair:** It probably would, Mr Elston. However, at the end of the day, when we have to go vote in the Legislature, someone's going to be cut very short, and if you can accept that—

**Mr Elston:** I'm happy about that. Floyd, I know, can't be here all afternoon. In any event, we'll see him.

**The Chair:** But I mean prior to lunch, when we vote, Mr Elston, and you know that as well as all the members do, so I'd like to try to manage the time as best I can.

**Mr Elston:** Perhaps Mr Savage can file something in writing then as to what he would have replied.

**The Chair:** Mr Elston, I'm sorry. We're going to bring this to order. I want to thank the Canadian Life and Health Insurance Association Inc for making its presentation before the committee this morning. I appreciate it very much.

CAISSE POPULAIRE  
STE-ANNE-LAURIER D'OTTAWA

**The Chair:** Our next presenter this morning is Mr Georges Bédard, chairman of the Caisse populaire Ste-Anne-Laurier d'Ottawa inc. Please make yourself comfortable. While we're waiting, just very quickly, I would like to let the committee members know that the Finance minister, Floyd Laughren, will be here at 3:45 pm today. He has a short statement to make, so we will have about an hour's time to spend with him and ask him some questions. Mr Bédard, whenever you're comfortable you may proceed.

**M. Georges Bédard :** Bonjour. Mon nom est Georges Bédard. Je suis le président de la Caisse populaire Ste-Anne-Laurier à Ottawa, et je suis aussi un administrateur de la Fédération des caisses populaires de l'Ontario.

Même si les opinions que nous allons présenter aujourd'hui sont partagées dans une très large mesure par l'ensemble de notre mouvement, elles sont uniquement attribuables à la Caisse populaire Ste-Anne-Laurier.

La Caisse tient à remercier le Comité permanent des finances et des affaires économiques de cette occasion qui lui est donnée de faire connaître son opinion sur le projet de loi 134, Loi sur les caisses populaires et les credit unions. La Caisse populaire Ste-Anne-Laurier, avec un actif de \$125 millions, est la caisse avec le plus gros actif en Ontario.

Projet de loi: la caisse populaire est très heureuse que le gouvernement ontarien ait placé parmi ses priorités de 1994, la révision de la Loi des caisses populaires et des credit unions. Nous appuyons fortement cette initiative, mais nous croyons qu'il doit se produire des changements importants avant que ce projet de loi devienne loi. Nous appuyons les positions prises par notre Fédération ainsi que par la coalition. Nous réalisons tout de même que chacun des participants à la coalition a dû faire certains compromis afin d'en arriver à une position commune.

Voilà pourquoi notre caisse a jugé nécessaire de présenter un mémoire afin d'appuyer notre Fédération et, au besoin, d'aller plus loin dans nos demandes de modifications à ce projet de loi. Nous sommes d'avis que les

opinions que nous présentons au comité sont partagées dans une très large mesure par l'ensemble de notre mouvement.

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Nous sommes raisonnablement satisfaits des pouvoirs commerciaux ainsi que de la structure du capital tels qu'ils sont proposés. Naturellement, il demeure inquiétant que beaucoup de choses soient décidées par règlement. Pour cette raison, nous demandons que le Ministère établisse un mécanisme permanent de consultation avec l'ensemble de l'industrie, et en particulier avec les deux fédérations francophones, afin de nous assurer que nous puissions bénéficier d'une réglementation souple et apte à favoriser le développement de notre réseau de caisses populaires qui déjà fait preuve d'une cohésion unique qui renforce la solidité de nos institutions.

Le point qui nous inquiète est notre manque de contrôle, par et pour les francophones, au niveau provincial. Nous référons particulièrement aux pouvoirs accrus de l'assureur-dépôts, spécialement dans le domaine de la stabilisation, et au niveau du Ministère dans le pouvoir d'émettre les permis de prêt. Nous ne demandons rien qui s'appliquerait uniquement aux caisses populaires. Nous demandons que la Loi reconnaisse spécifiquement qu'un regroupement de caisses populaires ou de credit unions qui est structuré en conséquence et qui désire le faire, puisse, à l'intérieur de règlements de la Loi, s'autogérer et s'autodiscipliner.

Permettez-moi de donner plus de détails sur certains amendements que nous proposons à ce projet de loi en appui ou en plus de ceux déjà mentionnés par la coalition ou par notre Fédération.

L'Ontario est la province la plus industrialisée et la plus économiquement forte au Canada. Pourtant, en 1993, alors que l'économie canadienne était sortie de la récession, l'actif du Mouvement des caisses populaires et des credit unions de l'Ontario n'a connu qu'une croissance modeste de 2,9% et son bénéfice net a chuté de 9,9%. L'insuffisance du fonds de l'assureur-dépôts s'est détériorée en 1993, passant de \$ 68,7 millions à \$ 70,4 millions, et ceci malgré des revenus des primes de plus de \$ 23 millions.

À notre avis, la pauvre performance de l'industrie s'explique par l'absence de l'affiliation obligatoire qui fait en sorte que le leadership qui peut être exercé par nos institutions, de même que l'imputabilité financière qui en découle, sont déficients.

Selon la Caisse populaire Ste-Anne-Laurier, la plus grande faiblesse de ce projet de loi est de ne pas exiger l'affiliation obligatoire. Par «affiliation obligatoire», on entend l'affiliation obligatoire d'une caisse populaire ou d'une credit union à une fédération ou une «league». Selon nos renseignements, dans toutes les provinces canadiennes sauf l'Ontario, l'affiliation des caisses ou des credit unions à une fédération ou une «league» est obligatoire. Tous ces gouvernements qui ont sous leurs juridictions des coopératives financières, ont cru à la nécessité de l'affiliation pour assurer un sain développement du réseau coopératif.

Nous savons que la coalition est partagée sur ce sujet.



Certains souhaitent l'affiliation ; d'autres la craignent. En devant cette absence de consensus, le gouvernement a plutôt choisi le statu quo.

Nous déplorons que le gouvernement ne voit pas cette nécessité de l'affiliation et n'accepte pas de jouer son rôle de catalyseur économique, afin que le Mouvement coopératif ontarien assure sa survie et demeure pour encore longtemps une alternative viable au secteur capitaliste bancaire.

Si le gouvernement n'est pas prêt à exiger l'affiliation obligatoire, nous demandons au gouvernement qu'il accorde, à l'intérieur d'un encadrement par règlements, beaucoup plus de pouvoirs et de responsabilités aux regroupements des caisses populaires et credit unions qui croient à l'affiliation.

À titre d'exemples : avoir un niveau de capital et de liquidité pour un regroupement de caisses populaires ou de credit unions plutôt que pour chaque unité individuellement ; avoir le droit, et non simplement le privilège, d'être désigné office de stabilisation ; pouvoir émettre et réglementer, pour ses membres, les permis de prêt.

En ce qui concerne les permis de prêt, la loi devrait, par voie de règlements, donner à une fédération, une «league» ou un office de stabilisation le pouvoir d'émettre et de réglementer les permis de prêt. Il sera très difficile pour le Ministère de pouvoir contrôler et réglementer les permis de prêt pour plus de 500 caisses populaires et credit unions. Les fédérations, les «leagues» ou les offices de stabilisation, étant plus près de leurs membres, sont plus aptes à connaître leurs besoins, ainsi que la compétence des ressources humaines qui oeuvrent dans le domaine des prêts.

Une chose est certaine : le ministère ne devrait pas avoir le pouvoir de révoquer ni de modifier un permis de prêt, à moins que la caisse populaire ou la credit union n'ait pas respecté les modalités ou conditions de son permis de prêt.

Le projet de loi donne à l'assureur-dépôts le pouvoir de désigner une fédération, une «league» ou une association de caisses populaires ou de credit unions comme office de stabilisation. Le pouvoir de donner la désignation et de régir un office de stabilisation devrait se situer par règlements au niveau de la loi et non résider dans les pouvoirs de l'assureur-dépôts. En plus, une fédération ou une «league» ne devrait pas être désignée à titre d'office de stabilisation. Une fédération ou une «league» devrait pouvoir demander, au nom de ses membres, la création d'un office de stabilisation, mais celui-ci devrait être distinct des fonctions d'une fédération ou d'une «league».

Nous proposons donc que si une fédération, une «league» ou une association de caisses populaires ou de credit unions en fait la demande pour ses membres, le directeur doit y donner la désignation d'Office de stabilisation, selon les conditions prescrites par règlements.

En conclusion, nous, de la Caisse populaire Ste-Anne-Laurier, tout en reconnaissant que les caisses populaires sont distinctes des credit unions, reconnaissons également que nous devons opérer sous la même loi et avec le même assureur-dépôts. Ce que nous demandons au gouvernement ontarien est de permettre, à l'intérieur de

la loi, que tout regroupement de caisses populaires ou de credit unions qui est structuré en conséquence et qui désire le faire, puisse, à l'intérieur de règlements de la loi, s'autodiscipliner et s'autogérer.

Nous, ainsi que les autres membres de la Fédération des caisses populaires de l'Ontario, avons démontré clairement notre engagement à nous doter d'une structure d'autodiscipline, forts d'une solide confiance en notre capacité collective d'assurer avec succès le développement de notre réseau de caisses populaires. Nous comptons sur la compréhension des membres de ce comité et espérons que vous donnerez concrètement suite aux demandes minimales de ce mémoire qui, à notre avis, reflète fidèlement l'engagement de notre mouvement. Nous avons simplement besoin d'une loi permissive.

Je vous remercie. If there are any questions, I would be pleased to try to address them.

**Mr David Johnson:** Thank you very much for making a presentation on behalf of the Caisse populaire Ste-Anne-Laurier d'Ottawa. It seems to me that the primary concern you raised revolves around mandatory affiliation.

**Mr Bédard:** That's correct.

**Mr David Johnson:** That's something I'd like you to expand upon a little bit. I'm not so sure whether there were problems resulting from the lack of mandatory affiliation authority within the act or whether it was a missed opportunity.

**Mr Bédard:** I believe it's a missed opportunity. The difficulty is that in all provinces where there are laws dealing with the question of caisses populaires and credit unions, except Ontario, there is a mandatory affiliation. The hope is that we in Ontario would have a similar kind of law set up so that all caisses populaires and all credit unions would belong to some group or another.

The reason is very simply that when you have an umbrella group, that umbrella group is capable of dealing more closely with its member organizations and controlling them. Where you have a situation where some of them are independent and have none of this family kind of control, you may end up in a severe situation.

Ontario hasn't done as well with its caisses populaires and credit unions as I believe it could, and one of the reasons is that, for a cooperative movement, it really hasn't been cooperating as much as it should in ensuring that it moves ahead fully. For a cooperative movement, it seems rather ludicrous that it does not have mandatory affiliation.

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**Mr David Johnson:** You've said that perhaps it hasn't been as successful as it should have been. Does that mean that we have encountered more defaults or other financial problems as a result of the fact that, as you say, a federation or a local coalition would have a greater understanding of the needs of its members and would be able to monitor better? Or are you referring to the fact that with a federation, the financial power would be greater and the caisse populaire would expand and be more successful?

**Mr Bédard:** Both. I don't think there is any doubt



about it. You would have more regulations, because the family would try to keep the family together and work together and try to encourage its member groups. But also, on the other aspect, if, for instance, you have a caisse like mine, \$125 million in actif, that is a considerable amount of money. However, there are some caisses that have only a few million dollars. If you put it all together into an affiliation and are able to spread that around from the point of view of ensuring that the reserves are all there, instead of my caisse simply having its own reserve, all caisses together could probably meet the necessary regulations or laws that specify the amounts of reserves they should have.

It's the same thing with liquidity. If one caisse needs funds and another caisse has a lot of liquidity, as it is now we can't transfer those funds to that particular caisse. It may be a small caisse that needs that liquidity while the large caisse doesn't necessarily need it because it doesn't have those people available to borrow that money. So we could transfer it within the family. Those are very important things that would ensure economic development for sure.

**Mr David Johnson:** This creating of a federation is possible today, obviously.

**Mr Bédard:** We have our own federation, and what we're simply saying is that it should be mandatory, because I can leave my federation at any time I want, and I'm the largest caisse in Ontario. I think it would be a bit ridiculous if I did that. In fact, historically, Laurier, a caisse we amalgamated with, had done that and got into trouble, as you will recall.

**Mr David Johnson:** My time's probably coming to an end, but given these benefits, why wouldn't—

**The Chair:** Mr Johnson, we're going to have to move on.

**Mr David Johnson:** I guess my time has come to an end.

**Mr Elston:** Is it possible to have everybody join a federation? I know what the argument is. There are several benefits. But is it achievable?

**Mr Bédard:** It is certainly possible if you oblige them to. You are the lawmakers.

**Mr Elston:** But is it practically possible?

**Mr Bédard:** I think it's very practical. I don't think there's any doubt about it. It's just that some people like their independence, and what we have to say to them is that for the betterment of the movement, you have to bind together.

**Mr Elston:** I agree with your suggestion that it would be healthier for the overall movement, both credit union and caisse populaire, if there were mandatory memberships, but I also like to have things that are practically achievable.

This is actually a question to the parliamentary assistant. I don't have problems with some of your suggested amendments about necessary changes in the wording that would express more an appreciation for the distinct nature of caisses populaires. Are there possible wording changes suggested in the presentation? Are there some changes that don't appear to destabilize, at least from my view,

what appears to have been a fairly good piece of work in consultation among the players involved?

**Mr Owens:** Believing always in the art of the possible, as we move towards clause-by-clause, if Mr Bédard, along with Mr Glower and others from the ministry—I don't see why it wouldn't be possible to continue the good work we've started on this. I'm not going to put the paycheque on the table here today and say it would happen, but it's always a possibility.

**Mr Elston:** With respect to the position on the use of the name "caisse populaire," are there problems now with some who are not using the name appropriately?

**Mr Bédard:** The danger is that as the movement progresses and as assimilation unfortunately progresses in some of the francophone areas, the caisse populaire eventually through affiliation will become more of a credit union than a caisse populaire; in other words, will be more anglophone than francophone in its nature and maintain the name "caisse populaire." That was a major concern of the organizations.

The other concern is that the present law or the way it's being structured now permits caisses populaires to maintain their name. If it goes that route, it may cause our movement to have a caisse populaire which is really not a caisse populaire but more of a credit union. I think everybody recognizes the distinct natures of a caisse populaire and a credit union: One is francophone and the other one is anglophone.

**Mr Elston:** Can a non-francophone participate in a caisse populaire?

**Mr Bédard:** Oh, a lot of them do.

**Mr Elston:** So it isn't a problem of participation. It is more in the sense that the business transactions and activity around the caisse populaire is to be dealt with in French, and that the retention of the nature of la Féd and your credit union is part of a broader movement. Is that fair to say?

**Mr Bédard:** That's correct. We want to make sure that la gestion, management is francophone in its flavour and nature.

**Mr Elston:** Can you tell us a little bit about la Féd? Basically, it's a much more integrated system, isn't it?

**Mr Bédard:** We try to work together. I can't speak for the credit unions, but the reason we work together is because we have a common goal. Our common goal is not only economic development, but it's also economic development for the francophone community. Obviously, when you're working in an environment which often imposes a lot of things on you, being a minority, you fight harder and act more like a family. Family union is extremely important and maybe that's why most of the caisses populaires are either with la Fédération or with l'Alliance. The other independents are usually found, I believe, in credit unions.

**Mr Owens:** Thank you very much, Mr Bédard, for your presentation. I think we're at variance on some of your points. I'd like to address, first of all, the issue with respect to the cultural nature and the government's commitment to maintain the unique cultural aspects of the caisse populaire system. You may or may not be aware



that we're in the process of amending the legislation to include the reservation of the term "caisse populaire" for use by caisses populaires; and that we're further providing for language that will entitle people to receive services in French; and last, that none of the exceptions with respect to the use of the term "credit unions" will be applicable for "caisses populaires." It's the commitment of the government to maintain the good work and the commitment of the francophone community to its financial institutions.

**Mr Bédard:** We appreciate that and encourage it.

**Mr Owens:** Thank you. I would like to ask Mr Glower to respond to the issue of mandatory affiliation.

**M. Harvey Glower :** Si vous permettez, je vais m'adresser à ce sujet en français.

C'est bien reconnu que dans les autres provinces, l'affiliation obligatoire est assujettie à la loi. Comme M. Bédard nous l'a dit, il y a une histoire, dans cette province, de support pour et de crainte de l'affiliation obligatoire. Mais je pense que le gouvernement a pris la position que les éléments de risque les plus foncés doivent être adressés quelque part, et donc, dans ce cas, nous avons choisi une position forte et efficace. Cela veut dire mettre dans la loi l'obligation «mandatory» d'affiliation au niveau de la stabilisation. C'est là où nous pensions que les mesures nécessaires pour assurer la stabilité financière de tous les caisses populaires et credit unions pourraient nous garantir le succès du mouvement.

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To summarize, basically the government has taken the position that it's difficult to mandate something that should otherwise come voluntarily. But where the level of risk exists in terms of maintaining the financial stability of the member institutions, we have chosen, with the recommendations coming primarily from the caisses populaires and the success of the caisses populaires, to mandate mandatory affiliation in a stabilization authority. We think this is probably the first step.

I believe that the caisses populaires have stated time and time again that once everybody sees the benefits of stabilization, they should voluntarily move on their own to mandatory affiliation with a league for all the other caisses that a league would and could provide.

**Mr Bédard:** That is certainly the hope. However, it has been how many years since the law has been revised, and still they don't necessarily want all those benefits or are not encouraged to go towards mandatory affiliation. So how many more years are you going to have to wait? This is a perfect opportunity to move ahead now and we encourage the committee to do that now.

**Mr Glower:** To address a couple of the points you've mentioned as an alternative: One was with respect to the level of capital and liquidity, pour un regroupement des caisses populaires et des credit unions, as opposed to looking at them on an individual basis that we look at them as a whole.

There are a couple of issues. Certainly section 75 of the statute will permit a league to sell the shares on behalf of all of its member credit unions or caisses populaires to the members of those financial institutions;

that's one step. The other step: You may be aware that the regulations dealing with liquidity are looking at the ability to look at everybody in a réseau.

**Le Président :** Monsieur Bédard, je vous remercie de votre présentation d'aujourd'hui.

INSURANCE BROKERS ASSOCIATION OF ONTARIO

**The Chair:** Our next presentation is by the Insurance Brokers Association of Ontario. Please come forward. I see in your presentation that you will be identifying yourselves, and that's very much appreciated.

**Mr Robert Stuart:** My name is Bob Stuart. I'm president of the Insurance Brokers Association of Ontario and own a small brokerage in Markham, Ontario.

**Mr Robert Carter:** My name is Bob Carter, and I'm the executive director of the Insurance Brokers Association of Ontario.

**Mr Arthur Langley:** I am Art Langley, president-elect of the Insurance Brokers Association of Ontario, and I operate a small brokerage in North Bay, Ontario.

**Mr Stuart:** Mr Chairman and members of the committee, on behalf of the Insurance Brokers Association of Ontario, we are pleased to have the opportunity to appear before this committee to discuss the views of our industry regarding proposals by the government of Ontario to reform the financial institutions legislation as it relates to the regulation of credit unions.

Our thanks go to the ministry staff who have worked very closely with all the interest groups to ensure that everyone has been heard and that this legislation will be as fair as possible.

The Insurance Brokers Association of Ontario draws upon the services of a permanent staff, headed by an executive director and a volunteer board of directors representing all areas of the province.

I'd like to take a few moments to comment on the role of the broker. The role of the insurance broker is often misunderstood. The contribution of IBAO members to the wellbeing of society is clear. Insurance brokers are community leaders, active in all facets of life in their communities. Most members are involved in charitable institutions, minor league sports, religious institutions and most other community programs. More important, most insurance brokers are small business people and, together with their employees, contribute significantly to the province's economy and prosperity.

Property and casualty insurance brokers serve the insurance requirements of individuals in virtually every community of Ontario. Our members, independent insurance brokers, buy insurance on behalf of the consumer. Their objective is to provide the best possible product at the most competitive price to properly protect the insuring public. In the event of claims, the independent insurance broker is often called upon to represent the consumer to the insurance company.

Insurance matters are complex. As society becomes more complex, so does insurance. For example, note the recent change in Bill 164 governing automobile insurance: The accident benefits section has been expanded from eight pages to 77. This requires a professional independent adviser.



Insurance products vary from company to company, and coverage must be tailored carefully to suit each individual's needs. Brokers are independent of any insurance company or financial institution and must remain so to provide independent advice to the insurance consumer. To ensure this independence, legislation must prohibit control of independent insurance brokers by any financial institution, be it an insurance company, bank, credit union, trust company or stockbroker.

A broker's advice is objective and not predisposed to any option before the client's requirements are assessed. There is a risk that this could change dramatically if the insurance distribution system is altered to allow the retailing of insurance by an untrained, biased sales force.

I'll now ask our executive director to comment on our association and its position.

**Mr Robert Carter:** The Insurance Brokers Association of Ontario is a provincial professional association of property and casualty insurance intermediaries in Ontario. IBAO represents over 7,600 licensed brokers and their support staff. In 1995 we'll celebrate our 75th anniversary.

IBAO plays an important role in maintaining dialogue with its members to ensure that they are kept informed on matters of interest and on changes that have an impact on our industry. As the provincial voice of the Insurance Brokers Association of Canada, we not only keep our members informed about provincial issues, but we provide firsthand education and information on matters of a national interest so they may properly serve the insuring public.

Our association works extremely hard to improve the level of competence of insurance brokers by offering a comprehensive, professional development program and by establishing standards for qualification and ethical behaviour. The professional designations, CAIB, Canadian accredited insurance broker, and CIB, chartered insurance broker, are evidence of our professional standards. IBAO also promotes and encourages the development of self-regulation for our members.

IBAO has played a leading role in the ongoing consultation process between government and industry. Our efforts are aimed at improving the services and professionalism provided by insurance brokers, while safeguarding the interests of the consumer in Ontario.

Further, it is our view that consumers benefit most and are protected best when all insurance intermediaries are properly qualified and licensed and operate on a level playing field. A level playing field is one where the consumer receives independent advice so that no unnecessary pressures are brought to bear on them at the expense of proper coverage, competitive pricing and personal service.

Many financial institutions are pushing the limits of legislation to test the will of regulators. How will they react if regulations are expanded and how will this affect the insurance consumer? We've attached a couple of recent articles out of the *Globe and Mail* that show that.

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Reform of provincial legislation governing financial institutions in Ontario is long overdue. These reforms

represent an important step towards providing Canadian financial institutions in Ontario with a legislative framework that allows them to be more competitive in both domestic and international markets. The measures introduced recently are also a significant move towards creating a level playing field for all sectors of the financial services industry in Ontario.

IBAO made its views and concerns known to the government of Ontario in December 1993. We wish to emphasize once again that we support the policy direction government is taking. We believe these initiatives will stimulate competition and benefit the consumer.

In particular, we support legislation and regulatory change that will harmonize the powers granted to federally regulated institutions with those of provincially regulated institutions such as credit unions and trust companies. Regulations should be implemented immediately to ensure mirroring of the federal Bank Act with respect to the retailing of insurance, as confirmed in the minister's letter to our president, Mr Stuart.

It is imperative that legislation and regulations with respect to trust companies be implemented as quickly as possible in order to level the playing field for all financial institutions. From our perspective, however, these provincial reforms should not extend to credit unions new powers exceeding those currently available to federally regulated deposit-taking institutions. This sets a precedent which can lead to further changes that may not be in the public interest.

Our committee has been working with ministry staff on a detailed technical level. We support the intent expressed and believe it is important to conclude the debate and move quickly to the other sectors of financial institution reform. This must be done to prevent one pillar having an unfair advantage over any of the others.

Currently, the rules which apply to federally licensed financial institutions are different from those which apply to credit unions and provincially licensed trusts.

Our support for the regulations, however, must be qualified. We suggest that the regulations be modified to reflect three concerns, not only to level the playing field but also to prevent abuses.

We're particularly concerned that the regulations do not attempt to define the terms "promotion" or "business of insurance." These terms must be defined to avoid further misrepresentation. While we understand that the government wishes to remain flexible, we believe that the regulations intended to deal with this may not be sufficiently clear to enforce government policy intentions. We would be pleased to continue to work with the government to help fine-tune the definitions.

Second, we suggest that the words "on risks outside Canada" should be added to clarify the intent of clause 2.1 and ensure that it is consistent with the federal Bank Act. The federal Bank Act stipulates that a chartered bank in Canada may carry on any aspect of the business of insurance outside of Canada and in respect of risks outside Canada, other than the underwriting of insurance. Clause 2.1 lacks that precision.

Third, with respect to section 11, it is our view that a



credit union should only be permitted to administer a policy which will no longer be permitted under part III for one year or until the next renewal date, not ad infinitum.

**Mr Langley:** On behalf of the members of the Insurance Brokers Association of Ontario, we wish to thank you for this opportunity to speak to you.

We believe that an independent intermediary is the best method of delivering an affordable product that best combines customer needs and personal service at affordable prices. We wish to reiterate that our average member has approximately six employees, and we are located in every small community in the province. As big businesses, including financial institutions, restructure and begin to close branch operations, we believe the need for the independent insurance broker will increase, and we look forward to serving the Ontario consumer for many years to come.

Thank you for your attention. We would be pleased to answer any questions you may have.

**Mr Owens:** Welcome back to the finance and economics committee. Memories of Bill 164—

**Mr Jim Wiseman (Durham West):** Dancing in your head?

**Mr Elston:** I think they're dancing on the head.

**Mr Owens:** I'd like to thank you once again for your presentations. As always, you have been quite helpful to the ministry with respect to providing commentary. It's my understanding that a copy of the draft reg has been released to the industry. Before Mr Elston raises his hand, I have a copy of a draft business-of-insurance regulation for members of the committee.

**Mr Elston:** Nothing I like reading better than regulations.

**Mr Owens:** As an aside, it was our intention to distribute it before this morning, but unfortunately I've had illness in my staff so we've been unable to do that. But I do have it this morning. I would ask either Mr Campbell or Mr Savage to address some of the questions you've raised during your presentation.

**Mr Terry Campbell:** Just a few comments on the presentation. You say at page 13 that "risks outside Canada" should clarify the intent of clause 2.1 to make it clear that they can't undertake outside Canada things they cannot do internally, and you specifically refer to the underwriting of insurance.

In the regulations we've been working on in this regard, we've made it clear in the very next subsection of that section that credit unions shall not underwrite insurance. We think that gives the sufficient degree of clarity and precision you're asking for in clause 2.1.

On the next point you make, page 14, the business of "a credit union shall be permitted to administer a policy for one year," the approach we're suggesting for those few that are in place now in terms of a transition period is consistent with the approach taken at the federal level. In any case, if a policy is in place, it's probably not the best idea to have it arbitrarily yanked. It probably should simply run its course.

Those would be some comments I would make in response.

**Mr Robert Carter:** If I may, I think life insurance policies run ad infinitum. Property/casualty policies renew every year, and if you don't define how long they can go, they could keep providing renewals. I think we're all aware that some of the financial institutions push the regulations. They're offering these policies now, so they could be new this year, until the legislation and regulations are defined, and then they'll be permitted to renew them ad infinitum. That's what we're looking to tidy up from the property/casualty point of view.

**Mr Campbell:** I think what we'll have to do is that our staff will talk to you and we'll get some clarity and precision on the terms.

**Mr Robert Carter:** That's great. Thanks.

**Mr Elston:** I'm interested in the business you're involved in, particularly when there are concerns about others entering the market. Could you just go over briefly some of the items around education for the person who's going to be doing the business of brokering? If there's an anticipation that there are others going to be expanded into the marketplace, it seems to me that you would expect on the level-playing-field issue that others would be trained to comply with the requirements that your profession also has to comply with. Would that be a fair assessment?

**Mr Stuart:** Obviously, there is a lot of education required. Just to hark back for a moment, if we may, to Bill 164, there are currently sessions taking place around the province where over 3,000 members of the industry will be taking yet further education on this bill. As we've tried to point out, the business is becoming not simpler but much more complex as years go by and there is a continuing need for, I think, full-time commitment to it and a considerable amount of continuing education. Otherwise, the needs of the consumer will just not be met.

**Mr Elston:** In fact, the complex nature not only of auto insurance but also of life or health and accident insurance is such now that you've even established your own facility for education of your professionals.

**Mr Robert Carter:** Yes. We have a registered school for educating our members.

There's something that's slightly off the topic but that involves us, and I think it's the easiest way to describe education and the role of the independent broker. Travel accident insurance, everyone seems to feel, is a pretty easy thing that you can buy over the counter somewhere. We're aware of three entirely different processes for it.

Currently there are insurance companies that offer that if there's a pre-existing condition, it's totally excluded. There are other companies that offer, if it's a pre-existing condition, a 20% deductible, and as you know, out-of-Canada medical is pretty expensive. There are other companies that state that if the pre-existing condition is under control through drugs, it's covered 100%.

Clearly, if you just walk into a single supplier and buy one, you have no idea of the other options and you have no idea, in some cases, what you've bought. That's one

of the clearest areas where we can show that insurance is getting more complex, and as the government is forced to reduce out-of-Canada benefits, this issue will become more and more complex.

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**Mr Elston:** In regard to some of the changes you suggest should be made, most of them are in the regs, unfortunately, which we will get to deal with a little bit later on, but we have no real authority here. Is there some legislative version that might help? We could always try and include it in the legislation as opposed to regulation, but technically, I wouldn't want to do that. I don't want to take one section of a reg or an amendment to a reg and put it in the legislation if that can be avoided, but is there a more general blanket coverage in the legislation that might help you, as opposed to changes to the regulation? I think it should be discussed here in the legislative amendment format if that would be of assistance so that we understand all of the ramifications of not doing it.

**Mr Robert Carter:** When we first started the process with the staff, our major concern was the differences, ie, this is permissive legislation and the restrictions are in the regulations. I think they've done a commendable job matching the Bank Act through that process. And, yes, we are concerned that the regulations, when they are finished, may not complete that task. But so far, it looks like they will. You're right: I think we've commented more on what we'd like to see—clarify the regs. But once the decision was made to offer permissive legislation, then the real activity will take place on ensuring that the regs do what they're intended to do.

**Mr Elston:** If in fact the regs were changed to allow broader sales, or sale of broader products in the insurance area, for instance, though, you would recommend that an extensive pre-education requirement be put in place before any of that was allowed to occur?

**Mr Robert Carter:** Absolutely.

**Mr David Johnson:** Thank you for your presentation. Earlier this morning there was discussion about replacement insurance. Is that an issue?

**Mr Robert Carter:** It's not an issue with property/casualty. You can replace it every year on renewal.

**Mr David Johnson:** When going through your brief in order, I guess the first issue that comes up is Bill 164. It's not pertaining here today, but perhaps it gives us some pause. Has there been any kind of assessment on impact of Bill 164 financially? I know you mention that professional independent advisers are required, and you're talking about education and that sort of thing. Is there any bottom-line assessment that you've done?

**Mr Stuart:** At this stage it's far too early to comment on financial ramifications of that piece of legislation. It will be far-reaching. There has been a fair amount of ramification on insurance brokers in that there's a very considerable amount of time being spent on education to get our minds around the new product so that we can explain it properly to our clients.

**Mr David Johnson:** I'm sure it translates into a certain amount of time for each broker.

**Mr Stuart:** Very much so.

**Mr David Johnson:** I suppose it varies from broker to broker, does it? Has any general assessment been made? Time translates into money, of course, too.

**Mr Stuart:** To give you an example, this current round of seminars is five hours per person, just on one portion of that automobile product. That's probably in a lot of ways the most complicated product that we deal with, but that's the level of commitment that is required to properly understand it.

**Mr David Johnson:** That's the kind of assessment that should have taken place initially, I suspect—by the government, I mean.

Going on, you comment on trust companies and you say from your perspective that provincial reform should not extend to credit unions new powers exceeding those currently available to federally regulated deposit-taking institutions. Could you be a little more specific on what you're thinking of there?

**Mr Stuart:** At the moment, under the provincial loan and trust act, there is no restriction on the sale of insurance by those bodies. With the completion of this piece of legislation, they will be the only one in that position, which is certainly not levelling the playing field.

**Mr David Johnson:** That's where it gets back again to, if that's permitted, there certainly would have to be a level of education there.

**Mr Robert Carter:** We mentioned somewhere about how whenever you do something, it has another effect. Bill 164 removed certain restrictions on how automobile insurance is marketed, and ever since then there's been more aggressive marketing by the financial institutions. This credit union legislation puts us back to where we were, or in a similar position to where we were, with the banks etc. As Bob said, there is now a gap in there to allow the provincially licensed loan and trusts to do some things they couldn't do a year ago.

**Mr David Johnson:** The bottom line seems to be, though, that your concerns are with the regulations, and until we see those regulations—

**Mr Robert Carter:** On the regulations, they've done a very good job. We had concerns going in, but, as I say, I think the ministry staff has done a great job as far as getting to where we thought they couldn't get to when they were drafting them.

**Mr Owens:** Sorry, Dave.

**Mr David Johnson:** Well, we give you credit. I hope you can do this on all the other bills too.

**Mr Owens:** Don't sprain your shoulder patting yourselves on the back.

**The Chair:** Mr Wiseman, you have about two minutes.

**Mr Wiseman:** I'm intrigued by your choice of articles that you included here about the banks. I'm going to give you an opportunity to tell me exactly what your point is with these articles. I hope it's the same point I would be making.

**Mr Robert Carter:** What we've noticed is that the banks have become more aggressive in their dealings.



Primarily the CIBC—but we won't mention names—has been aggressively trying to market insurance.

**Mr Elston:** They're just initials.

**Mr Robert Carter:** I think one of the things I heard on the credit union presentation is that they want to be in a position to make small loans to small businesses. The banks have vacated that over the years. When you read the article on how they're trying to influence the replacement of Mackenzie in Ottawa, they are so powerful that they are just going to keep pushing and pushing and pushing. We all have to be very careful of how we control them in this province. If you give some small advantages to a provincial loan and trust or a small advantage to a credit union, they'll just steamroller over the top in the next few years.

**Mr Wiseman:** I'm concerned that the banks have withdrawn from that small business loan. In fact, since 1989, they've withdrawn over \$3.8 billion worth of loans under \$200,000, which to me has contributed a great deal to the economic circumstances we find ourselves in. Is part of the point I'm to understand from this that maybe they shouldn't have this kind of concentration of delivery of services to the public and that it would be better to have a far more diverse market system?

**Mr Robert Carter:** We think it's imperative that we have a far more diverse market system. Over the years, through federal changes, they've been permitted to eliminate the pillars. I'm not sure, and I don't think any of our members are, that eliminating all the pillars of finance is the right way to go.

**Mr Wiseman:** Do you have any research we could use here to indicate that because of the decrease in competition and the broadening of the roles of the banks, our economy is going down a road that is not positive and not constructive to the economic development of either this province or the rest of Canada?

**Mr Stuart:** If you were to look around and compare the number of independent stock brokerage firms now as compared to five years ago, there's been a significant reduction there, where the banks have walked in and bought one after the other after the other, which again limits the consumer's choice in that particular area.

**Mr Robert Carter:** I think the simplest one—because we don't know all the ramifications when it happens to us; we're just making some assumptions—is, if you've checked your bank charges lately, once control gets into six boardrooms, isn't it amazing that every one of them has the same charges? They lose money in the Third World and increase the bank charges to Ontario depositors.

**The Chair:** I'd like to thank the Insurance Brokers Association of Ontario for making its presentation before the committee this morning.

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#### INSURANCE BUREAU OF CANADA

**The Chair:** Our next presentation this morning is by the Insurance Bureau of Canada. Would the bureau's representatives come forward, please, make themselves comfortable, and identify themselves for the purposes of the committee members and Hansard.

**Mr Stan Griffin:** Good morning. My name is Stan Griffin. I'm vice-president, Ontario, at the Insurance Bureau of Canada. Joining me this morning are Ani Abdalyan, associate counsel with the Insurance Bureau of Canada, and Ron Switzer, senior vice-president and manager for Canada of the Liberty Mutual Insurance Group. Ron is also a member of the Insurance Bureau of Canada's Ontario advisory committee, advising our board of directors on issues relating to Ontario. We are pleased to have the opportunity to present our views to the members of the standing committee on finance and economic affairs on Bill 134, an act to amend the Credit Unions and Caisses Populaires Act.

IBC is the national trade association representing companies whose premium income represents more than 80% of private sector automobile, property and casualty insurance business in Canada. IBC member companies include more than 75 company groups, comprising approximately 149 member companies, writing premiums in excess of \$12 billion Canada-wide in 1993.

Since its formation in 1964, IBC has become the official voice of property and casualty insurance companies in Canada, acting as a liaison between insurers and the federal, provincial and municipal governments, the business community, consumer groups and other mutual interest organizations.

I'd like to touch briefly on some recent financial sector changes. Since the federal financial institutions legislation reform package came into force in 1992, the distinguishing features of the four pillars of the financial services industry—chartered banks, trust and loan companies, insurers and investment dealers—have started to erode. New borderline products and services are being offered by each of the traditional pillars that are servicing and competing for basically the same customer.

With the implementation of the federal reform package, legislative and regulatory harmonization has become a key priority for both the federal and provincial governments.

The government of Ontario began a major review of the financial services legislation in December 1992, with a comprehensive consultation plan. This review covered legislation for credit unions, loan and trust companies and the Insurance Act with respect to two projects: one on life agents, which is reflected in this bill, and the other on the broad recommendations coming from the Insurance Legislation Review Project, often referred to as ILRP.

Bill 134 is the first result of the financial services review process, and IBC notes that the recent provincial budget signalled the introduction of changes to legislation governing loan and trust companies. IBC urges that changes to the Insurance Act be introduced quickly, as this stepped approach to the introduction of these three pieces of legislation will result in a temporary unevenness in the financial services playing field in Ontario.

IBC is pleased to have had the opportunity to play a key role in ongoing consultation, and specifically has been a participant in the review of Bill 134. IBC's particular interest in restrictions regarding the retailing of insurance by credit unions was recognized through consultation on draft regulations in this area. Confiden-



tiality agreements were required in advance, allowing a detailed and meaningful review. The consultation has been thorough, and IBC appreciates the opportunity for early and specific input. We welcome the introduction of Bill 134, an act to amend the Credit Unions and Caisses Populaires Act. The proposed changes will modernize the legislative environment in which credit unions operate.

The financial services sector, of which property and casualty insurers are a vital component, is often a complex sector. Legislation and regulation governing any part of the sector can influence other parts of the industry very significantly. IBC appreciates that, where possible, Bill 134 seeks to harmonize with federal and provincial standards that apply to deposit-taking institutions.

To comment on some specific insurance-related issues on Bill 134, our chief area of concern, one that IBC feels is essential for consumer protection, is that of insurance retailing from the premises of deposit-taking institutions. Legislation and regulations need to ensure there is no opportunity to exercise undue influence and that customers are in no way pressured into buying products they do not require or want in the hope of obtaining some other financial service or product as a result.

Bill 134 follows the federal lead and does not allow credit unions to retail insurance or lease space in their branches to licensed agents. It is not by accident but rather the result of conscious public policy that legislative barriers, both federal and provincial, have been imposed on entry into this field. Accordingly, IBC fully supports the government's stated decision to restrict insurance activities of credit unions.

Unlike the federal legislation, however, which prohibits retailing insurance unless permitted by regulations, Ontario's credit union legislation will rely on regulations only to restrict insurance activities. This was discussed during consultation on the bill, and IBC is satisfied that the regulations will achieve an adequate level of protection for consumers.

With regard to the proposed amendments brought forward regarding farm mutual insurance companies, we note that they would allow them broader powers to own subsidiaries. This will bring the powers accorded these provincially incorporated companies in line with federally incorporated insurance companies operating in the province. We would note, however, that according to the latest report of the superintendent of insurance for Ontario, 1992, in addition to the Ontario farm mutuals there are 21 insurers incorporated in Ontario that are regulated exclusively by the Ontario Insurance Act. In 1992, these companies wrote approximately 11%, or \$826 million, of the total property and casualty insurance business in the province.

IBC urges the committee to amend Bill 134 so that the proposed amendments expanding powers of the farm mutuals are extended to all Ontario-incorporated insurance companies. Such amendments would ensure a level playing field in this area between Ontario property and casualty insurers and farm mutuals. This is of particular concern if the comprehensive review of the Insurance Act is not going to result in amended legislation in the near future.

In conclusion, IBC respectfully submits that harmonization with the regulations governing the insurance activities of federally incorporated deposit-taking institutions within Bill 134 represents adequate restrictions on the insurance activities of credit unions and satisfies the public interest in protecting consumers. The government is urged, however, to move quickly to bring the Insurance Act into conformity with the amendments made for the other players in the financial institutions field and, in this legislation, to put Ontario-incorporated insurance companies on the same basis as farm mutual insurance companies.

IBC thanks the members of the committee for the opportunity to provide input. We would be pleased to respond to any questions members may have.

**The Chair:** Thank you very much for your presentation. We have about seven minutes per caucus.

**Mr Phillips:** I listened carefully, and it sounded to me like you were in pretty broad agreement with the legislation, with the one exception being at the top of page 5 of your presentation of urging amendments to hook up the provincially incorporated insurance companies which I gather you're suggesting represent perhaps 11% of the business in Ontario.

**Mr Griffin:** That's correct.

**Mr Phillips:** I think we heard the same presentation earlier this morning from another group recommending the same thing.

If I recall, the staff's view on that was that it was your plan to incorporate any changes when you bring forward the more comprehensive legislation. So it's possible that we're kind of trapped in that in a sense one could argue that we will force a faster review of the Insurance Act, a comprehensive review, and trying to deal with it piecemeal may be not the right way to go.

1110

Maybe you can just comment on that. Is it possible to deal in this bill with your concerns around the provincially regulated companies, or would it be better for us to try and deal with it as part of the comprehensive review of the Insurance Act?

**Mr Griffin:** I guess if we could be assured of the timing of the comprehensive Insurance Act, then we could say let's wait until then. If, however, that's going to be some time in the future, we don't see any reason why this group of companies should be left outside the powers that are being accorded to everybody else in the province. It could be very easily amended, through this bill, to give those same powers, specifically to own subsidiaries, to all Ontario-registered insurance companies, because it will leave about 10% of the market behind with that specific power.

**Mr Elston:** Before I run off to my House leaders' meeting, the real issue right now is the chain of products. The Ontario corporations, I take it by your presentation, are even at a disadvantage with respect to some of their federally regulated counterparts. Can you describe the nature of products that might be excluded from dealing by Ontario-regulated companies inside your own business, I guess? Then maybe you could go on to talk about



some of the problems you have in competing with sale of products against banks or others. That really is the issue, isn't it, access to the market?

**Mr Griffin:** I think so. We have prepared a very specific and complete response to the Insurance Legislation Review Project, but the specific issue that we brought forward in our brief is really the request by the farm mutuals to have the right to own downstream subsidiaries which, yes, all Ontario-incorporated companies are currently restricted from doing. It's that specific provision that we're saying should be opened up. It's not really so much a product-related issue as an ownership issue of these companies.

**Mr Elston:** The downstream subsidiary ownership, though, does deal with issues of product eventually, doesn't it?

**Mr Griffin:** It certainly could ultimately end up dealing with issues of product, like data processing companies that may support the company or may generate income for the company, or other types of consulting services.

**Mr Elston:** What sort of disadvantage are the Ontario companies at in terms of the product field at the moment? You don't seem to have a problem at the moment with respect to credit unions broadening their fields there or deposit-taking organizations initially, with some legislative provisions that are permissive, regulations that are restrictive. Can you describe what's happening or what the desire is in relation to the insurance industry in that regard, in terms of occupying market?

**Ms Ani Abdalyan:** If I can respond to that question, our submission on the ILRP spans close to 20 pages, and basically I think it would be correct to say it's the governance regime altogether. The legislation is well antiquated, to the extent that the legislation no longer really meets the needs of the companies by any stretch of the imagination, and not only of the companies, but also of the marketplace.

**Mr Elston:** Have you generally, in your discussions, received favourable reviews of your presentation? I understand there's a confidentiality issue perhaps. I don't want you to violate any confidentiality-of-discussion type of thing, but have you been relatively happy that discussions are going well in that regard?

**Mr Griffin:** Yes, I would say the consultation has been productive. Certainly all parties have been listened to and it's been a very productive process.

**Mr Elston:** And generally speaking, you have an understanding of the wording that is to be applied to the changes that the industry would like to see occur, I take it?

**Mr Griffin:** With regard to the regulations coming forward with Bill 134, yes.

**Mr Elston:** And in relation to the broader discussion around the insurance review? Have you gone that far?

**Mr Griffin:** Yes, we have had quite extensive discussions around the Insurance Legislation Review Project. However, that seems to have been put as the final stage of all of this legislation, so it's a bit further off and it's a bit more difficult to tell. Our immediate

consultative discussions have been positive and, yes, we certainly have been listened to and have had input.

**Mr Elston:** But in terms of the business position right now, the market moves quite quickly. The disadvantages which months of delay could exhibit might mean, for some companies, the difference between success and having to find new partners; let's put it in that way. Is that correct? So there's a real necessity of pushing on with this, and an undertaking certainly should come quickly with respect to the balance of the changes. Is that my anticipation?

**Mr Griffin:** It certainly has that potential. We describe it quite often as being that we're going to end up with a two-legged stool, which you can sit on for a while, but it's better to have a third leg there to keep yourself stable.

**Mr Gary Carr (Oakville South):** A quick question, before David goes on, on the whole issue of the regulations. As you know, there's a big concern, and not only on this piece of legislation, that when things are put in regulations—and I don't say this to this government necessarily—you think you're heading down a path with great consultation and so on, and then the regulations come out and change.

Is there any concern, following along on Mr Elston's question, with regard to the regulations? I think you answered it quite a bit, but I just wanted to carry it further. Do you have any concerns with regard to the regulations and the ease with which they can be changed? You're pleased now with this, but as you know, down the road they could be changed very quickly without consultation. Are there any concerns having it in the regulations and, if so, what are some of those concerns?

**Mr Griffin:** Our objective was to meet harmonization goals with federal deposit-taking institutions legislation. That's the end goal and we're satisfied that's achieved through the combination of legislation and regulation being used here. In many cases our first preference would be to have it in legislation, but I think we're satisfied at this point that the same goal is achieved by the route that's been taken here, by doing it through regulations.

**Mr David Johnson:** To get back to the legislative review that is, I gather, under way—I'm not totally familiar with all this—what is your understanding of the time frame in terms of the changes to the Insurance Act that you're hoping for?

**Mr Griffin:** That's probably a question better directed to the government than to me.

**Mr David Johnson:** I assume that, yes, the government would have a little more control, but you've indicated that it's important to have speedy changes. You're hoping for—I see the words "introduced quickly" here. When you say "introduced quickly," what sort of time frame are you seeing in your mind?

**Mr Griffin:** Ideally, we would have liked to see all of these come forward at the same time. That was the approach taken federally. All of the acts governing the various financial institutions were amended and brought forward and implemented at the same time. That would be the preferable approach. This is not the approach



being taken here, so we're urging the government to at least bring the final piece forward as quickly as possible so that you don't have a long gap in between pieces of legislation being brought up to date.

As to the timing, I really couldn't answer that. That's up to the government's legislative agenda as to when it decides to bring that forward, but we'd like to see it as quickly as possible.

**Mr David Johnson:** I appreciate that, and you're quite a diplomat. I'm just looking ahead over the next year and the fact that we're coming towards the end of the mandate of this government. Who knows for sure, but there's some thought that the legislative process is recognizing that fact and slowing down. If this change doesn't occur until after the next election, which, by the time a new government gets up and gets going, could be 1996, is that unlevel or uneven, as you term it, playing field cause for concern during that sort of time frame?

**Mr Griffin:** It puts at disadvantage about 10% of the market in some particular areas. The one area we think could be dealt with very easily is the powers extended to farm mutuals for ownership of subsidiaries. That could be dealt with very easily at this point in Bill 134, and that would lessen the disadvantage that these companies would be put at over that interim period. We would like to see at least that portion brought forward.

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**Mr David Johnson:** That's one of the key features, and that has to do with the downstream subsidiaries. You've discussed that with the staff, I presume, up to this point, have you?

**Mr Griffin:** I believe the proposed amendments to the farm mutuals were introduced very recently. We have been advised of them but we have not had a chance to discuss them at any great length or detail.

**Mr David Johnson:** But you have had a chance to look at them yourself and it's your view that they could be implemented fairly simply.

**Mr Griffin:** Yes.

**Mr David Johnson:** On the bottom of page 3 and on page 4 of your presentation, you talk about the concern with regard to undue influence being exerted upon customers. I'm just following through on a train of thought here. You do then indicate, I believe, that the regulations, as you understand them, have imposed restrictions on insurance activities that would hopefully prevent this sort of situation developing. But I'm not sure of the bottom line here, as you seem to express strong concern for this and perhaps an uneasy acceptance that the regulations have addressed the situation. Is that a fair analysis?

**Mr Griffin:** Yes. I think we've discussed this previously. That is our main concern in this piece of legislation, and I should say up front that we are a bit of a bystander—not a bystander, but this is not legislation that is front and foremost of concern to us, other than primarily from this networking area. That is an area in which we do have concern; however, we are satisfied that what's being done through the regulations will deal with that concern.

**Mr David Johnson:** I think those are all the questions I have.

**Mr Owens:** Thank you, Mr Griffin, Ms Abdalyan and Mr Switzer, for your presentation this morning. On behalf of the Insurance Bureau of Canada, I will also say to Mr Switzer that I look forward to reading the enclosure in my premium notice with regard to the support of this particular bill and its effect on the insurance business.

I'd like to ask Mr Savage to comment on your concern with respect to the farm mutuals and the networking issue.

**Mr Savage:** With regard to your concern about the other provincial companies, I might just say that I think there are really two aspects that differentiate the farm mutuals from those other companies.

First of all, you talked about forming strategic alliances with other partners and so on. Stock companies, of course, can do that upstream through their parent company and through their ownership, and most of those other Ontario companies that you referred to are stock companies. So this is an option that's not available to the mutual companies because the farm mutual companies are owned by their policyholders.

But the other thing that differentiates the farm mutuals is that they all belong to what's called the farm mutual guarantee fund, which means they all stand behind each other's liabilities, and on an aggregate basis they are in a very, very strong financial position, much stronger than would be typical for a normal insurance company. It was having that in mind that was certainly a major consideration in seeing the farm mutuals dealt with in this way, because they do have the financial strength on an aggregate basis that most individual companies would not have.

I'd just like to make those two comments and say that for the other companies, certainly I don't believe it's the government's intention to block them from having those kinds of powers at some point in the future.

**Mr Owens:** Just in conclusion, it's the view of the minister and the government ultimately that with respect to this part of the financial services review that we're undertaking, it's again being done with a view to provide the kind of level playing field. There's an acute understanding with respect to how quickly the nature of your business changes, as well as others within the industry, and it's our commitment that we're going to continue to work with groups like yourselves to ensure that we can address those concerns on an acute basis and not have to wait 40 years, as you've waited to this point to address some of the issues.

The globalization of the financial marketplace and technology changing approximately every 15 minutes means that we have to have that kind of level of responsiveness to ensure the integrity of your business is maintained.

**The Chair:** Thank you. If there are no further questions from committee members—Mr Wiseman?

**Mr Wiseman:** Yes. I wanted to give you an opportunity to expand on and help me out a little bit here. You say that "the four pillars of the financial services indus-



try—chartered banks, trust and loan companies, insurers and investment dealers—have started to erode.” Can you give me some idea of where the competitive advantage is starting to develop and who’s the loser in that area and why and what the impact will be?

**Mr Griffin:** Well, I think the immediate impact is obviously on the consumer. We heard the brokers discuss this briefly in their presentation, and the question is, who’s being served and to what advantage, when you look at these things.

Why would we want to concentrate even more power and allow a very small group of financial institutions to provide even more services and products? Why is that? Why would we want to allow five or six banks to provide the full range of financial services? Is it for competitive reasons? Are we trying to increase competition? There are 120 property and casualty insurance companies offering business. It can’t be for that reason. There’s a great deal of competition here already. Is it for consumer choice? It doesn’t match that criterion.

There are a number of policy objectives, I think, that governments have to keep in mind as they move into this whole area as to why it’s being done, who’s to benefit, and it should be the consumer ultimately. If there’s no consumer benefit, why are we doing this?

**Mr Wiseman:** The second question I have with respect to companies is, do you know if anybody other than the farm mutuals have approached the government? If they haven’t, maybe they just don’t see it as a problem. In terms of the regulated companies that you mentioned with respect to—

**Mr Griffin:** The companies that fall outside of this?

**Mr Wiseman:** Yes.

**Mr Griffin:** Well, we are approaching the government by the process of this committee to make that statement. Many of those companies are very small in the province and do not belong to groups like the farm mutuals’ association, do not belong to our association. There are one or two that are very large and do belong to our association and I think have kind of missed this in the last couple of weeks, so we’re bringing it forward on their behalf.

**Mr Wiseman:** Are you saying that the small ones perhaps really don’t know what’s going on in terms of this legislation because they don’t have the resources to follow it?

**Mr Griffin:** It’s possible, yes. It’s very likely.

**The Chair:** I’d like to thank the Insurance Bureau of Canada for making its presentation before the committee this morning.

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LIFE UNDERWRITERS ASSOCIATION OF CANADA

**The Chair:** The next presentation, and the final presentation this morning, is by the Life Underwriters Association of Canada, if the representatives of the association would please come forward. Please make yourselves comfortable, and if you would identify yourselves for the purposes of the committee members and Hansard, when all that is finished, please proceed.

**Mr Paul Bourbonniere:** My name is Paul Bourbonniere. I’m chairman and chief executive officer of the Life Underwriters Association of Canada and a chartered life underwriter and chartered financial consultant in private practice in Markham. With me is John Wahl, CLU, CHFC, who is a past chairman of LUAC. Our comments, by the way, can be found behind tab 2 of our formal submission that has been presented before you.

LUAC is the national professional association of life insurance agents in Canada. LUAC is a non-profit association established in 1906. We provide an extensive professional development program and we administer a code of ethics. We have 18,000 voluntary members and we are primarily engaged in the sale and service of life and health insurance, annuity contracts, pension plans, RRIFs and registered retirement savings plans. Over 8,800 of our members are resident in the province of Ontario.

LUAC appreciates the opportunity to appear before you and your committee to present its comments on Bill 134. The association’s comments will focus on the credit union proposals and the proposed rules to govern life insurance agents, known as the life agent reform proposals or LARP.

I will address the credit union proposals in my opening remarks and I’ll ask the Chair’s permission for John Wahl to speak on LARP itself.

In respect to the credit union proposals, LUAC appreciates that the public hearings of this committee are being held on the bill, but the proposed insurance business regulations, or IBRs, to be issued under the legislation are, in LUAC’s view, an essential element in the statutory scheme that will determine the extent to which credit unions will be restricted in their insurance activities. My comments therefore will relate to both the bill and the proposed IBRs.

LUAC supports the need to modernize credit union legislation. Fundamentally, it is LUAC’s view that credit unions should enjoy similar powers but be subject to similar restrictions as other deposit-taking institutions regardless of their federal or provincial registration. Credit unions should not be granted the ability to engage in insurance activities which exceed those of other deposit-taking institutions. In other words, there needs to be a level playing field.

The association is satisfied that the bill and proposed IBRs together achieve a high degree of equivalence with federal financial services reform legislation. LUAC, however, continues to have overriding concern that the restrictions on insurance activities by credit unions are contained mainly in the IBRs rather than the statute. The IBRs can be relatively easily and quickly changed by order in council.

If, for example, changes in the IBRs were made to give credit unions some marketing advantage with respect to insurance activities over other deposit-taking institutions, such as banks or trust companies, it assuredly would not be long before those institutions sought expansion of their powers in this area, first to gain the same business powers and then ultimately to tilt the playing field to their advantage.



On the matter of credit unions being permitted to promote merchandise and services to the holders of payment, credit or charge cards under item number 6 of section 174 of the bill, our concern there is that such promotion can be to the cardholders of any financial institution, not just the credit union. Banks, on the other hand, are limited under their legislation to promotions to the holders of such cards only when they are issued by that particular bank.

LUAC therefore recommends to this committee that the provision in paragraph 6 of section 174 be amended to delete the reference "any other financial institution."

The matter of the extent to which credit union leagues may engage in insurance activities is a concern. LUAC understands that leagues differ from individual credit unions in that they are separate corporate entities whose objects are to provide their members, that is to say, credit unions, with financial services such as cheque-clearing and trade association services such as marketing and product development.

Section 243(3)(d) of the bill, which allows leagues to provide other services as may be prescribed by regulation is made subject to the permitted business activities in section 174, which applies to credit unions, not leagues. LUAC wonders how a provision directed at individual credit unions is intended to apply to leagues in the absence of express authority. Ministry officials have indicated to LUAC that, by virtue of section 245(1) of the bill, the leagues are subject to the same insurance regulations that apply to credit unions.

LUAC believes it would be entirely consistent with the ministry's explanation to amend section 243 by adding a provision that stipulates that a league may only undertake that business of insurance to the extent permitted by the regulations. LUAC recommends such a provision to this committee.

In respect of information safeguards and item number 28 in section 316 of the bill that allows for regulations to govern the use of "confidential" information by the credit unions, LUAC initially was concerned that the qualification "confidential" begged the question of what is or what is not confidential information in contrast to a similar provision in the Bank Act that applies to "any" information. LUAC is now satisfied, based on communication with your officials, that the proposed IBRs will apply to "any" information and therefore will be substantially equivalent to federal IBRs under the Bank Act and Trust and Loan Companies Act.

LUAC was initially concerned with the use of the word "customer" as opposed to "member" throughout the proposed IBRs, but we understand that this has been changed, that the reference will be to "member" rather than "customer."

The transitional rule in section 11 of the proposed IBRs that grandfathers certain types of policies administered by a credit union causes some concern as well. Since the rule applies at the time the bill and IBRs come into force, LUAC believes credit unions might seek to expand the types of insurance policies they administer prior to the coming into force of the IBRs in order to have them also grandfathered and thereby take unfair

advantage of the delay between first reading and proclamation.

LUAC therefore recommends to this committee that such grandfathering apply at the time the bill was introduced, that is to say, December 9, 1993, rather than at the time the bill and the IBRs come into force.

To sum up, underscoring my previous comments, LUAC believes it is essential for competitive equity that the insurance activities in which credit unions are permitted to engage be subject to the same restrictions as federally regulated deposit-taking institutions.

With your permission, Mr Chair, my associate John Wahl will now make some opening remarks on the LARP initiative in Bill 134.

**Mr John Wahl:** As Mr Owens pointed out earlier, this has been a very long process and we've been pleased to be a significant part of that process. Personally, I'm very happy to see it drawing to a satisfactory conclusion, because I'm in real danger of it having spanned three of my personal decades. I've met with many of you personally over the past years and certainly Superintendent Savage's office has been open on every occasion we've asked, and we thank you for that. We look forward to being a part of the ongoing consultation process.

My remarks are in the text. If you have a chance to look at them, you'll find they are primarily housekeeping matters dealing with what I believe to be a locking in of the intent of the bill. With your permission, Mr Chairman, and in deference to your time, I'd rather not read them and allow our staff and your staff to work them out and solve them and leave this time open to questions. Would you mind?

**The Chair:** It's entirely up to you, sir, if that's what you choose.

**Mr Wahl:** I believe they are very much are housekeeping matters and I see no difficulty in the intent of the bill. We're very, very pleased with it.

**The Chair:** I'm sure the committee members are appreciative of the extra time you've allowed them, Mr Wahl. We have more than seven minutes per caucus and we'll start in the Progressive Conservative caucus with Mr Johnson.

**Mr David Johnson:** Thank you very much, Mr Bourbonniere and Mr Wahl, for your comments or your lack of comments, I guess, in the latter case. It makes it a little tough to ask questions, though, and I have to be a fast reader and go through it here.

However, going to the first deputation, I think you've outlined very specifically what you'd like to see done, so maybe there isn't as much sense in questioning you as in putting your points to the staff and seeing what their reaction is to them.

Not anticipating being up quite as quickly as I am but, let's see now, your first concern has to do with the marketing advantage, for example, that might be achieved if the regulations are changed. That's one of the concerns I think you've expressed. Maybe I'll pose that to you first while I look a little further here.

**Mr Bourbonniere:** Mr Chairman, through you, essentially our concern is, the regime that we now have



in Ottawa is restrictive legislation with permissive regs; in other words, they can't do anything except as provided. Quite frankly, that's the approach we hoped was taken in Ontario and, as been mentioned before, the regulations appear to be headed down that path.

The concern is that any very temporary opportunity or advantage provided to the credit unions will immediately within minutes be matched by phone calls to Ottawa by the banks to get the same powers, and indeed perhaps more so. It becomes a bit of a Pandora's box, because the whole corporate concentration issue and lack of consumer choice becomes paramount. That is obviously our overriding concern, that this eventually leads to dominance by the banks.

**Mr David Johnson:** Looking specifically on page 4, you've made a recommendation at the bottom of page 4 and the top of page 5 that in line with your concern, I gather, in terms of section 174, the credit union members would be able to do promotion to cardholders of any financial institution, and your recommendation is that that be restricted to simply their own members.

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**Mr Bourbonniere:** That's correct. The reference to section 174, in fact, is behind tab 11, and it proposes to allow the credit cardholders of "any...financial institution," which is far broader than the provisions in the federal Bank Act, and as a result would invite retaliation or expansion of the bank powers federally.

**Mr David Johnson:** Mr Chair, I wonder if I could have a staff reaction too. That's a very specific request. Could we have a reaction to that?

**Mr Campbell:** Yes. As you say, it is very specific, and the words that you have concerns about are highlighted here. I believe that our staff have been considering changes along this line. We certainly heard you and we certainly understand the concerns you're raising. I think we'll be able to chat about that and more, but the issues you have raised are quite clear.

**Mr David Johnson:** There's some hope that you may look at that, at least hope from the point of view of the deputants. Carrying on, there's concern expressed with regard to confidential information, that the credit unions allow for regulations to govern "the use of confidential information by the credit unions."

There was concern about the word "confidential," how it would be defined, and the Bank Act applies to "any" information. LUAC is now convinced that the staff will make an amendment in this case and the bill will reflect "any" information as opposed to confidential information. Is that your—

**Mr Bourbonniere:** It's our understanding that, staff to staff, there have been discussions in that area that would resolve that, but through you to your staff—

**Mr David Johnson:** Why don't we redirect that to the staff and see what their interpretation is?

**Mr Campbell:** My sense is that the way that LUAC has characterized things here is fair.

**Mr David Johnson:** All right. So we're batting two for two so far, from the sound of it.

Going on to page 7, your concern is that the IBRs that grandfather certain types of policies—these would be insurance policies, I guess, are they?

**Mr Bourbonniere:** Yes.

**Mr David Johnson:** —that some of the credit unions might seek to expand the types of insurance policies that they administer at the present time before this comes into effect, and therefore the grandfathering would apply to a broader range of insurance policies.

**Mr Bourbonniere:** Exactly.

**Mr David Johnson:** Again, a very specific recommendation that you have is that the bill would be retroactively applied to December 9, 1993. First of all, do you wish to expand on that any more before we redirect that to get the staff's comments?

**Mr Bourbonniere:** I think the committee members expressed exactly what the circumstance is. Any activities between December 9, 1993, and the ultimate enactment or enforcement of the regulations would allow for potentially some grey areas or even some activity that was unintended by the legislation itself.

We feel that though this largely appears to be house-keeping, it may prevent a lot of grief, depending on just how long or how big a time period that is. It's just a matter of, if the intent is there, then make it so that there's no uncertainty or unfair advantage during the interim period.

**Mr David Johnson:** Maybe to redirect that to staff then: (a) does the staff view this as being a problem; (b) would the credit unions have a different view on this whole issue and, if so, what would that view be; and (c) would you propose to acquiesce to the request of back-dating this to December 9, 1993?

**Mr Campbell:** On (b) and (c) I don't presume to speak for the credit union movement. I think they should probably speak for themselves. On (a), I think our view is that the government direction and the intention as to what the insurance retailing regime will be and should be under the regulations is fairly clear. I think we work very closely with both LUAC and the credit union movement.

Both sides understand what that regime would be, and I think from our point of view this transitional provision is that if it came into force and the legislation came into force, I don't think you would see any upsetting of the marketplace or any upsetting of the apple cart. I think, from the staff's point of view, as it's structured now is satisfactory.

**Mr David Johnson:** Let me be more specific in terms of the types of insurance policies that you have concern may be slipped in there and grandfathered during this interval or period of time.

**Mr Bourbonniere:** Mr Chairman, with your permission, if I could ask staff, do we have any specific examples on that?

**The Chair:** If you have someone else who would like to offer an explanation, if they choose to do that, I only ask that they come forward so they can be recognized by Hansard. If they choose not to, then that's okay too.

**Mr Bill Babcock:** My name is Bill Babcock. I'm



vice-president of the Life Underwriters Association of Canada. I apologize for my voice. I'm in danger of losing it with a severe throat infection.

**Mr Owens:** Why don't you go back to work.

**The Chair:** Please proceed, sir.

**Mr Babcock:** There is a set of prescribed insurance policies under the draft regulations. While it's difficult to suggest in addition, in recognizing that there not be a precise, transitional, phase-in implementation fully of the bill and the regulation, it would seem in our view to permit the possibility that in practice and in the market the credit unions could introduce particular new kinds of insurance policies or products or services. Generally, that is our concern.

The experience with the introduction of the federal insurance business regulations under the Bank Act was such that we knew with absolute certainty that the regulations which were considered as essential to enable the bill to be fully proclaimed and in effect were fully in place before such time as the Bank Act itself was actually proclaimed. So they were coincidental in real time, as opposed to running the prospect of them being separate.

**Mr David Johnson:** Okay. Is that my time?

**The Chair:** Thank you. We'll move on to Mr Owens.

**Mr Owens:** Just for the purposes of the committee, Mr Campbell and Mr Savage and their respective teams are working feverishly to put together a schedule of regulations and explanations that we will deliver to the committee. I believe next week is the time that's scheduled.

I want to thank Mr Bourbonniere and Mr Wahl for their presentation, and again, Mr Wahl, for your lack thereof. Brevity in language is always something that I appreciate, notwithstanding that I'm a politician.

**Mr David Johnson:** You don't practise it.

**Mr Owens:** You want a recount, right?

Just in terms of some of the other concerns that you've articulated, I know that we are going to continue to work with yourselves and others particularly around the issues that will be detailed in regulations, and I do want to say on a personal level that we appreciate the level of support that your group and others have given us on this very important project with respect to financial services.

If Mr Campbell or Mr Savage have anything else that they'd like to clarify—Mr Savage?

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**Mr Savage:** Just one comment. There has been a fair amount of discussion about exactly what powers the credit unions will have to sell insurance and whether something may fall between the cracks. I might just mention that there is another dimension to that, and that is that if any individual is providing advice about insurance or soliciting insurance etc, that requires licensing under the Insurance Act as an agent. Under the Insurance Act, no person can be licensed as an agent if they're an employee of a deposit-taking institution or an officer or a director of a deposit-taking institution. That's another thing that is at work here to deal with some of the concerns that might be raised.

**Mr Wiseman:** Mr Wahl, did I hear you correctly to say that you've been working on this for three decades to get some changes to the act?

**Mr Wahl:** Three of my personal decades, yes; I'm afraid that's correct. Through the law process.

**Mr Wiseman:** That's quite a considerable amount of time. The reason I raise that issue is because, if it has taken you three decades to open up and get this changed, maybe it would be easier to have some of the things in regulations so it wouldn't take quite so long to come back to the Legislature if it needs to be changed. As I see it, we are in a constant state of debate in this place about whether it should be written in the legislation, what should be written in the legislation and what part should be written in regulations. That was my first part of the comment.

The second part is that I detect a level of satisfaction on your part with the degree of contact you've had with the government. Is that correct?

**Mr Wahl:** Very much so, Mr Wiseman.

**Mr Bourbonniere:** Yes, very much so.

**Mr Wiseman:** If this degree of contact continues, that would ameliorate any fears you have that regulations might be done spontaneously or without having a sufficient amount of contact with you?

**Mr Wahl:** If I may, and my staff may clout me for this, I believe it's our view that regulations can be changed so quickly that we'd be in danger of maybe overriding what we really wanted to see happen in the first place.

**Mr Wiseman:** But do you think that would really happen, given the level of consultation that you've had up to this time in this process?

**Mr Wahl:** Perhaps not, but I tend to be a very cautious person.

**Mr Wiseman:** I just thought I'd raise those two points to ponder. We are in a constant state of dilemma over what should be in regulations because it could be that at some point in time changes might need to take place more rapidly than could happen if you had to open the legislation to do it.

**Mr Wahl:** We can appreciate that point of view, but for the very important elements we really believe we'd rather see them in legislation as opposed to regulation, yes.

I might add, Mr Wiseman, that the process started a long time ago and that it's come a long way. I would think all sides have made significant concessions to our original positions. In reading this piece, we're very pleased with it, very pleased.

**Mr Phillips:** I take it from all the comments that you're relatively pleased. I think there are two changes you would prefer in the act itself rather than in a regulation. In the exchange between yourself and the staff, I wasn't sure whether the staff were saying that, because it was clearly the intent of the act, it is possible that we could include the recommendations in the act rather than by regulation. The two were on page 4 and page 6, I think. In answer to Mr Johnson's comments, were you



saying that you didn't think it would be a problem in changing the act itself?

**Mr Campbell:** The structure of the act itself, in terms of the insurance retailing, is a structure where the legislation and the regulations work together and work in tandem. We think that by working together that way they in fact achieve equivalency with the federal rules, which are the benchmark rules for the marketplace. Our view is that it is a good structure. Generally, LUAC has suggested that it thinks the package achieves that level of equivalency. I didn't make any comments there and I think the structure is appropriate.

**Mr Owens:** If I could just respond briefly, Gerry, I think two of the main philosophical underpinnings in the legislation are, first of all, to level the playing field and modernize legislation that hasn't been modernized, in the case of the insurance folks, for 40 years and, secondly, that there's an understanding that it has taken 40 years to do this thing legislatively.

It's not the view of the government that we want to be able, whether it's us or another government, to unilaterally and without consultation change our regulations. However, in saying that, I think that, as I remarked earlier—and you know better than I do the changing nature of the financial services marketplace—you need to respond with a fairly high level of acuity and speed to the issue. It's our view that this kind of process allows for that, and of course with the continuing level of consultation that has taken place to this point.

**Mr Phillips:** Yes, and I agree and probably LUAC would agree, that if you take the proposed regulations and the proposed statutes together, it's fine. I think they're saying that if somewhere down the road the regulations were to change, it can have a profound impact, because then the other financial institutions, namely, the banks, would demand the same change and that would occur very quickly, and then you would have a huge problem on your hands.

You're saying, if the intent of the statute is the level playing field, put it in the statute rather than regulations to provide the level of comfort for everybody of how we got to this position. I'm hearing the staff say that you don't agree with that. For some other reason, you don't think it should be in the statute and it should be in the regulation.

What about the recommendation on page 6 to amend section 243?

**Mr Campbell:** We have different page numbers in our presentations here. Under tab 2?

**Mr Phillips:** I'm going from that document here. Yes, you probably do. From this book here.

**Mr Campbell:** Under tab 2?

**Mr Phillips:** The presentation book. It says, "LUAC believes it would entirely consistent with the ministry's explanation to amend section 243 by adding a provision that stipulates that a league may only undertake the business" etc.

**Mr Campbell:** Just taking LUAC's words and really stating it in a different way, I think the staff's view is that the statute as written is probably sufficiently clear in

that regard and that extra words would simply be extra words that wouldn't necessarily clarify things. So I think our view on that one is that the statute is clear as it stands.

However, on these matters where you're looking at wording to make sure the wording is absolutely correct, our legislative drafters are always interested in getting the right wording and we will certainly look at this in some detail to make sure the government's intentions are accurately reflected in the words. We will certainly take your comments back and look-see. I think our view, at least off the top of my head, is that we think the statute is probably sufficiently clear, but we'll take note.

**Mr Phillips:** My own takeaway from all this is that, correct me if I'm putting words in your mouth, but from LUAC's view, you're very supportive of that. From what I hear from here, the only possible significant point would be the one on your page 4, which would be including in the statutes the areas that are currently planned for a regulation. I think your view is that if the regulations stand as proposed, then that's fine, but if they're changed down the road, you've got problems.

**Mr Bourbonniere:** Mr Chairman, if I might comment on that, certainly the overall theme, and as John has alluded, it's been a long process and a successful one. However, we specifically did outline the areas that we feel are not to be glossed over; they are key issues. "Any" is a lot different than "confidential," and "any credit card" is a lot of difference and specific.

So, yes, the overall intent and thrust we're happy with, because the concept of equivalence appears to be what we're all striving for, but both through staff consultation and through our presentation today there are still some issues and we shouldn't lose sight of those, in our opinion.

**Mr Wahl:** The same is true of the remarks I chose not to read. Those are not unimportant items, but I really believe they are simply housekeeping and the intent of the bill was very clear. I really hope our staff and your staff can work to get those matters resolved.

**Mr Phillips:** Have your people talk to our people.

**Mr Owens:** We'll do lunch.

**The Chair:** I'd like to thank the Life Underwriters Association of Canada for making its presentation before the committee this morning.

**Mr Bourbonniere:** Thank you for the opportunity.

**The Chair:** I would like to inform the committee members again that the Finance minister will be here at 3:45 pm this afternoon. I would ask that you all be here promptly. This committee is recessed until 3:45 pm this afternoon.

*The committee recessed from 1200 to 1548.*

1994 ONTARIO BUDGET

**The Chair:** The standing committee on finance and economic affairs will come to order. I would like to welcome the Minister of Finance to our committee meeting this afternoon. We are all waiting anxiously to hear from the Finance minister with regard to post-budget delivery explanation. Welcome, Floyd, to the committee.



I'll tell the committee members that the Finance minister has about a 15- or 20-minute presentation to make and then there will be ample time, I'm sure, for questions afterwards. Floyd has indicated that he is expecting to leave at 5 o'clock, just for everyone's information. I also want to note that the rotation will be continuing from this morning. We will go to the government caucus first, and Mr Lessard is first up. From this point on, we'll turn it over to Mr Laughren.

**Hon Floyd Laughren (Minister of Finance):** Thank you very much, Mr Chairman. I do have a plane to catch and that's why I have to leave right at 5 rather than at 5:30, for example, but staff will stay longer if that's of assistance to the committee.

What I thought we'd do is a presentation that lays out the 1994 budget and some of the reasoning behind it and where we're going, and then allow as much time as possible for an exchange with members, because I think that's the most fruitful and interesting part of these meetings.

I will go through it fairly quickly. If you want me to slow down, say so, but I'm just going to assume that people are familiar with the language and the information so that I can move fairly quickly through it. I'll rely on you to stop me if you want further clarification.

Perhaps I should have introduced the two gentlemen at the table here with me, Jay Kaufman, who's the Deputy Minister of Finance, and Simon Rosenblum, who's the chief of staff of the Ministry of Finance.

The budget laid out a number of priorities:

—One was to do what we could as a commitment to jobs as a provincial government. Everyone knows we can't do it all, but to make a commitment to job creation and to keep the jobs that we already are responsible for through our capital programs.

—To do some tax cuts to encourage hiring, and we've done that.

—That there be no new taxes or no increases of existing taxes.

—That program spending would decline for the second year in a row while still maintaining the essential services of the province.

—Continue to reduce the deficit, and it is now down about 30% from two years ago.

—To lay out a plan, which is a reasonable plan—and if you look at the numbers, I know some will say it should be faster and others would say, "Not so fast, because you must continue to put money into programs" and so forth—that will give us a balanced operating budget by 1998. I'm always cautious about getting into some kind of bidding game or upping the ante as to who can do it faster, which I don't think is a particularly useful exercise. If you look at the numbers heading into 1998, I think you would see that they are reasonable assumptions built into both the revenue side and the expenditure side that will get us to the operating budget. It's "operating" and there's still capital on top of that, of course.

We continue to assert and believe that jobs are our number one priority, and we are showing that through our

commitment to spending on infrastructure. Those are investments in the future of this province. We've kept the capital spending up very high during this recession. I would remind you that during this recession the private sector laid off 300,000 people and we picked up some of the slack.

The capital spending is almost all on infrastructure, which not only provides jobs but makes us competitive as we head into the latter part of this decade. We will spend over \$1 billion in training and adjustment this year, and we continue to work with the business community in partnerships that are creative and different from what has been done before.

This shows the initiatives we've created or continued to support from 1991-92 to 1993-94, those three years, and then the projected for 1994-95. If you go through all of those—for example, at the very beginning we had a \$700-million anti-recession program that created about 17,000 jobs. Then you go into the base capital, which is the regular capital expenditures in all of the various ministries. Those are the number of jobs that those sustain. This year, projected: 62,000; and then all the way down—I won't go through the whole list; you can read them. The total would be 435,000 jobs since 1991-92 and then projecting another 166,500 this next year.

I don't want to leave anybody with the impression that we're going out there as a province, as a government, and creating 166,000 new jobs this year. That consists of our ongoing commitment on the base capital of all the various ministries, and that's 62,000.

Just picking some of the bigger numbers, in the Jobs Ontario Training: 24,000; in the Jobs Ontario Summer Employment: 23,000. Those are the ones that are not full-time, year-round jobs, of course, the summer employment, but all the rest are, and that's where we get our 166,000, which is up about 20,000 over last year.

We cut the employer health tax so that for increased payroll this year there will be no tax on that whatsoever. The business community and workers and labour unions, during the pre-budget consultations, told us that if we could do anything on the job side linked to taxes, "take the payroll tax." That's the one they would most like to see cut and so we've done that. That will support about 12,000 new jobs. It'll cost the treasury \$200 million—assuming it's taken advantage of, of course. We think it will, and this is the one that both labour and business liked as we headed into the budget. There were some announcements on budget day as well that said they thought this was a good initiative. The chamber of commerce, for example, thought it was good initiative.

We've introduced an innovation tax credit for small and medium-sized firms. It's going to be different than some programs in the past where you had to be making a profit, and for small businesses just starting up, it was very hard for them to take advantage of such a credit when they weren't making any profit in the early years, so this is a refundable one that they'll be able to take advantage of as they start out and spend money on research and development.

We always keep an eye on the competitiveness of our tax system and on payroll taxes for new employees. This



compares us to Quebec, as a neighbouring jurisdiction, obviously, and the US average. Payroll taxes are what both labour and management have probably the most difficulty with when it comes to taxes because it's a tax depending on how many people you hire and of course how much you pay them, so that's one reason why we say that when it comes to a tax that really does affect competitiveness on hiring of new people and new investments, a payroll tax is an important one, and we are below the average of our major competitors.

This shows the corporate income tax rate for manufacturing in the year we're in now, and it shows that Ontario has a corporate income tax rate of about 35.3%. Look at those states. They are states that are often used as comparisons for us when we're talking about competing investments: Michigan, Tennessee, Illinois, Ohio and New York, the US average in the middle being 40%.

Our Jobs Ontario infrastructure projects: We'll spend \$3.8 billion in capital. Highway 407 will be completed 16 years earlier than was originally anticipated and will be longer than was originally anticipated. It's not using public money; it's using private sector, who will build it, will operate it—the tolls—and will maintain it. If we hadn't done it that way, quite frankly, we couldn't have done it, because we just don't have that kind of money.

We've made a commitment to four Metro subway lines, contingent upon Metro picking up the offer, and there are 190 municipal sewer and water projects that we're funding through the Ontario Clean Water Agency. Perhaps for people in Toronto it doesn't seem that important, but I can tell you and many members around this table, I suspect, could tell you that there are all sorts of small towns and villages all across Ontario that have no sewer and water whatsoever. I have some in my own constituency. This is a good initiative, I believe, to crank up this. It improves infrastructure. It's a health issue, and also it creates a lot of jobs across the province.

We're investing in people. I mentioned we're spending over \$1 billion, about \$1.1 billion, in training and adjustment this year, and more than 370,000 Ontarians will benefit from this. That includes Jobs Ontario Training, which I think we all know about, and Summer Experience, the part-time jobs for the summer.

With small business, we did something in this budget that I think has been overlooked by a lot of the press and by a lot of people, and that's improving access to capital for largely the small business community. In the pre-budget hearings, one message we got loudly and clearly, particularly from the small business community, was that the banks were not serving its needs well enough when it comes to accessing capital. We're improving that by expanding the opportunities for loan and trust companies, co-ops, credit unions, caisses populaires and labour-sponsored venture capital corporations to have access to capital. This major initiative was introduced into the House yesterday with the introduction of that budget bill.

I mentioned the R&D tax incentive, and we're clearing the path. The Minister of Economic Development and Trade is going to make it easier for new businesses to register, then to pay their taxes and so forth, and clear the path for them.

The green homes and green industries initiative provides a real incentive for the development of new industries that will serve the province well. We're doing the initial part by sending people into factories and homes and offering advice—not orders, but advice—that will save the business community money, save consumers money if they take that advice and invest in green products and services. We think it's the right way to go because we couldn't go out and spend billions of dollars on it ourselves.

#### 1600

Ontario Hydro and WCB reform are important parts of changing the way we do business in this province. I think we all understand that. For three years in a row, Hydro had rate increases of 10% a year. That was completely unsustainable, so they froze it for one year and then are keeping it to no more than the rate of inflation for the rest of the decade.

Of course, we've announced some Workers' Compensation Board reforms. The important thing to note here is that when we announced the royal commission, besides the other changes, we gave them a fairly tight time frame to report back—the end of 1995—because we didn't want the commission to go on into the next decade as it examines the problems of the WCB.

There's some good news out there. Most of us are feeling very good about it, not just those of us in the Ministry of Finance but the private sector, the banks, the independent forecasters. They're saying there are going to be about 350,000 new jobs created in this province over the next three years. Our expansion is going to lead the industrialized world, not just this country, right through to 1997, and for 1994, business investment is up about 10%. That's a big chunk of money, about \$20 billion in new investment in the province. The real GDP is going to accelerate right through to 1997 as well.

So there is real reason for optimism that we can take seriously that the recovery has clicked in and that we're on our way. We could have a discussion about that too because unemployment is going to remain higher than we'd like it for the next three years, but that's true in a lot of economies that are now recovering.

This shows the growth in the G-7 countries that I referred to. On the left-hand side you have the Ministry of Finance forecast of the growth rate in the economy through 1997. You see ours is 4%, and for Canada 3.7%. That's the Ministry of Finance forecast. The others are what we call a consensus forecast. If you look at everybody else who does forecasting, then you can see that the reason we put this in here is that we're on the cautious side of forecasts for Ontario.

Our economic strengths are—well, there's a number of them, including where we happen to be located in North America. But also, investors tell us that the education and skill levels of the workforce and the flexibility of the workforce and the fact that we are one of the leaders in the proportion of the workforce that has some post-secondary education, which makes them more flexible, are a big bonus for us.

The labour costs are less than in the US. That's if you



include the benefits of our health care system, which are enormous—truly enormous. The example I always use because it came to me from the auto industry, which is critical to this province, is that if employers pay their employees' health care premiums here in the province, it costs them between \$600 and \$700 an employee, roughly, and in the States it could cost up to \$4,000 an employee. So you can see that this is a huge advantage for us in this province.

Our quality of life is second in the world according to the United Nations, and I often say this too. I don't say it often in a room full of opposition MPPs. I mean, we do come at each other—that's your job and my job—but at the end of the day most of us respect the fact that we've got a quality of life here, not just in Ontario but in this country, that's very strong.

Manufacturing productivity is up 12% over the last two years, and as I said earlier, our public services, not just health care but all of that infrastructure out there, are a major competitive advantage as well.

These are examples of large multinationals that have chosen Ontario for investments. They had alternatives and we've put the alternatives on there to show you. When Chrysler invested in Windsor, \$564 million, we were competing with Missouri for that investment. With Dupont investing in Kingston, Maitland and Sarnia, a \$200-million investment, there were a number of US sites. They tell you this, that this is who we're competing with.

Allied Signal, we competed with New Jersey; Inglis, with Ohio; Dimona Aircraft in London, with a number of US sites. With Toyota, specifically with a \$30-million investment in Cambridge, we were competing with Kentucky and California for that location and so forth. You can see that investors, despite what you hear from time to time, have chosen this province because we do have major advantages for investment.

One area that we still are unhappy about, and it was raised today in the Legislature as a matter of fact by one of the MPPs, is sharing of highway costs. These are just some very specific examples. Social assistance is the one we use most often because it's the one that hits us the hardest—the Canada assistance plan. That started out being a 50-50 sharing between the federal government and the provinces. It was felt that there should be a national standard on social assistance because you can imagine how corky the system would become if you had very high rates of social assistance in one province and very low rates in another. For obvious reasons, everybody wanted it 50-50.

Now we get 29 cents on the dollar from Ottawa, whereas most other provinces, including Quebec, get 50 cents on every dollar. That cost us \$1.7 billion this year alone. We have 38% of the workforce in this country and we get 27% of the federal training. That cost us \$360 million this year. The tobacco tax cut, which was truly, in my view, outrageous, cost us \$500 million in revenues this year, and that's taking into consideration the fact that there'll be no more smuggled cigarettes and that there'll be more smokers who would take advantage of the lower prices. That's a netted-out number.

We are working hard on providing services that are affordable, because people are concerned about the level of taxes, they're concerned about the growth in government. If it's growing, they don't want that but they want the services. We all, as elected members of the Legislature, get that message back in our own constituencies. I think certainly two out of the three parties get that message.

The social contract last year effected savings of about \$2 billion; not quite, but very close. Our target was \$2 billion. We're very close to that and prevented up to 40,000 layoffs. We could have saved the \$2 billion another way. We could have said, "Lay off 40,000 people." Instead of that, we imposed the social contract on 90,000 people. A very large number of people had some pain, rather than 40,000 people having an enormous amount of pain; namely, unemployment.

This is an important signal that was sent in this budget, that at the end of three years collective bargaining will return to the public sector but the \$2 billion will not. There's a lot of work to be done over the next two years to make sure that the public sector and the services they deliver are changed, because we don't want a mess on April 1, 1996. There's a lot of work to be done with this government helping and with the broader public sector—employers and employees—sorting out what happens in 1996.

We've kept health care costs constant over the last three years. They went up 11% a year during the 1980s. That's unsustainable. We've levelled them off, not without some pain, but we've levelled them off.

We've honoured our spending to hospitals, schools, municipalities and so forth this year.

We are changing some of the priorities. For example, in health care, we've shifted some money into cancer treatment and prevention and we've reduced the waiting time for cardiac care by about two thirds.

All governments, I believe, are trying to shift from institutional care to community-based care for two reasons. In the long run, we think it's more cost-effective, but also people will be better off being treated in their community and in their homes than in a large institutions. We've increased funding for that by 50% since 1990, which allows people to live at home when they're ill.

The new health card will help reduce abuse in the health care system, probably mostly in border communities, but certainly not only in border communities.

#### 1610

This is an interesting chart, I find, and people sometimes raise their eyebrows when I show it to them. This is what the base of spending was in 1990-91, in all those areas in the left-hand column of numbers. The middle column, 1994-95 budget plan, shows you what we're spending this year on all of those initiatives: for example, on child care, from \$350 million to \$566 million, a 61% increase; long-term care, a 38% increase; college operating grants and so forth.

You can see the big ones: non-profit housing, from \$255 million to \$820 million, so a 200% increase; social assistance, from \$3.3 billion to \$6.3 billion, that's almost



totally—not totally, but largely—driven by the increase in the case loads rather than a very substantial increase in social assistance rates. It's largely the case load increase. Pay equity: There was not much being spent on pay equity in this province when we formed the government. It's gone from \$68 million to \$574 million, a huge increase. All other initiatives have gone from \$19 billion down to \$17.5 billion, an 8% reduction.

I'm not suggesting that all MPPs have to agree with this shift of priorities, but it does show that there was a determined and conscious shifting to certain priority areas, and those are the priority areas. I know some will disagree with that. Total program spending has gone from \$38 billion to \$43 billion, or 12%.

The other number that has to give everyone pause for concern is the PDI, the public debt interest, going from \$3.7 billion to \$7.9 billion. That's over a 100% increase in interest on the public debt, and why we've simply got to continue to work at getting that deficit down and getting a surplus that'll start eating into the cumulative debt of the province, and we are determined to do that.

This is the growth in program spending since 1985, about a 10-year spread, and you can see this is program spending only, not everything. You can see how it's gone up as high as 14.7% our first year in office, 12%, then we got it down to 4%, then it was a negative number last year, largely due to the expenditure control plan and the social contract, and this year it'll be minus 0.8%. That does not include capital.

In this one I would ask members to consider the colour of the blocks and the years. From 1980 to 1985, the blue box, the program spending averaged an 11.5% increase. If you take out inflation, because to be fair, inflation was higher some of those years—

**Mr Wiseman:** But that's the Tories; that's not the Mike Harris team.

**Hon Mr Laughren:** No, that's the old Tories, the "Progressive" Conservatives.

In real terms, 1980 to 1985, it was 2.9%, to be fair about the numbers. The middle one, the red bar—it's supposed to be red on there; it's a little too pinkish for my liking—is meant to represent the government between 1985 and 1990, in real terms 4.5%; and then the last one, between 1990 and 1995, for which this government has some responsibility, has averaged 0.9%. Just to put it in perspective for those who say that social democratic parties spend too much money, we have reined in the program spending in the province while still trying to maintain essential services.

I didn't think I'd get through that presentation without heckling, but I congratulate the opposition.

On the deficit, because I mentioned earlier that interest on the public debt is a concern because it starts crowding out our ability to fund programs and that's not what we want to do, this coming year it will be \$8.5 billion. That's down by about 30% over the last two years. We said we'd come in, in 1993-94, the year that just ended, with \$9.2 billion. We slipped a bit and it was at \$9.4 billion but that, I would suggest to you, is a lot closer than other jurisdictions came in at in 1993-94. So we

were not far off our deficit for the year that just ended.

**Mr Monte Kwinter (Wilson Heights):** You were a lot farther off than what you predicted in 1990.

**Hon Mr Laughren:** Oh yes, absolutely.

**Mr Wiseman:** You guys were a lot farther off than you predicted in 1990 too.

**Hon Mr Laughren:** We have maintained the essential services. We've done some changes and so forth, and I appreciate that, but the essential services have been maintained and we are on target to balance our operating budget by 1998.

This shows how we get there. The yellow bar is the operating deficit or surplus, and the red is the total amount of budgetary requirements when you roll in capital. So, by 1998, you can see that our revenues exceed our program spending and then some of that is spent on capital.

The credit rating reviews: The staff in the Ministry of Finance and I myself have met with all four credit rating agencies: Moody's, Standard and Poor's, Canadian Bond Rating and Dominion Bond Rating. S&P is the only one who's said what they're going to do. They said they have reaffirmed our AA- credit rating with a stable outlook and they've acknowledged the province's accomplishments in controlling expenditures. We expect the three other rating agencies to come down with their decision within the next couple of weeks; maybe next week, maybe the week after—we don't have a date—and we'll see what happens.

We've certainly provided them with every conceivable number and they spent a lot of time poring over the numbers with people in the Ministry of Finance.

In summary—and I'll stop talking—job growth is growing, \$350,000 over the next three years. We are leading the country and other countries in the recovery and there is over \$21 billion in business investment planned for this year. We continue to make a commitment to jobs and to support about 166,000 of them this year we're in, and continue to invest in training and infrastructure and working with the business community.

On the fiscal side, we have our deficit going down. Our program spending has been reined in to less than the inflation rate and we will have a balanced operating budget by 1998. We really believe that number is achievable and we will continue to work as hard as we can to keep the services maintained at the present level and in some cases improved, but at the same time all within that fiscal plan through to 1998.

That's where we're headed. We're all feeling a lot better than we were a year ago. I would not have wanted to go through a budget-making exercise this year like I did last year and, quite frankly, what we did last year allowed us to have a budget like the one this year where we actually cut a tax and didn't increase any new taxes and kept the essential services.

We couldn't have done it if we hadn't taken the very tough decisions we made a year ago on the social contract, government expenditures reductions and the tax increases as well. We now have the revenue base that will allow us to maintain the services and we must trim



our sails continually on the expenditure side in order to live with that revenue base.

I thank you for your attention and I'm in your hands, Mr Chair.

**The Chair:** Thank you, Mr Laughren. We have about 14 minutes per caucus and we're going to start with the government caucus. I just want the members to bear in mind some of their colleagues would like to ask questions as well, and in this case there are three. We'll start with Mr Lessard.

**Mr Wayne Lessard (Windsor-Walkerville):** I always enjoy this opportunity to grill the Treasurer. I want to congratulate you on this budget. I think most people in the province certainly appreciate the fact that there are no new taxes.

I want to ask you about something that wasn't in the budget, however, because a few weeks before the budget there was an announcement about a reduction of taxation on beer and wine made at brew-your-own premises. People in my riding, which includes Hiram Walker, kind of looked at that with optimism and thought there might be a similar announcement made with respect to distilled spirits.

As you know, Hiram Walker is the fifth-largest taxpayer in the city of Windsor and in the last decade it has seen a big decrease in the employment at distilleries and they've also seen a number of distilleries closed in the province. They're calling upon not only the provincial government but the federal government to tax distilled spirits more fairly.

They claim that because of taxation the retail price in Canada is much higher than it is in the United States. As a result, legal sales of spirits have declined substantially in Ontario. Although consumption has decreased, to some extent due to lifestyle changes, it doesn't explain the whole decrease, and they claim that that's due largely to smuggling.

1620

My question to you is whether you agree that smuggling is a major problem, and if so, could you tell me what steps we may be taking as a government to protect jobs in Walkerville and decrease smuggling?

**Hon Mr Laughren:** Thank you, Mr Lessard. Your comments about Windsor are interesting. I spent a wonderful weekend in Windsor last weekend. I came away a little poorer, but nevertheless I had a wonderful time.

I do believe that smuggling of alcohol is a problem. I would differ with the quantity of the problem, if you will, that some have said, but it's hard to be precise on smuggling numbers. If it was easy to be precise, it would be easier to do something about it, I suspect.

I don't know who all here was in the Legislature yesterday afternoon on the introduction of bills when I introduced a bill that will increase enforcement and fines on smuggling of alcohol. That will proceed through the Legislature this session.

I do not believe the answer is cutting taxes. If we cut taxes on alcohol—that's why I resented cutting them on cigarettes so much, because where does that \$500 million

come from on the cigarettes, for example? Do we cut programs by that \$500 million? Do we allow the deficit to go up \$500 million? Do we increase taxes \$500 million?

There's nothing magical about it, and most people out there, I believe, support relatively high taxes on alcohol and cigarettes. I really believe they do. Nobody likes paying them, but they support them, knowing there has to be revenue from somewhere. So I would not want to hold out any promises on reducing taxes on alcohol.

We did reduce taxes on you-brews, as you mentioned. The reason for that was that we were dealing with what the economists call an infant industry that was struggling and we put in a very substantial increase that was planned from last year's budget.

I think it was too big a hit all at once, so we cut that in half and eliminated the planned increase that was there for this summer, but that was because of the nature of that industry more than anything else, and we had all the numbers to back up the bankruptcies that were occurring and so forth. I think it was an acknowledgement that we'd put in a fairly substantial beginning tax hit on them.

I don't believe any sales of alcohol should be tax-exempt. I just think it's a principle that we must maintain. So I would not hold out hope for reduction in alcohol taxes; rather I would hold out hope that we can do enough on the enforcement and fines side that will allow us to keep that smuggling in check as much as possible.

**Mr Lessard:** In previous hearings before this committee, we were looking at the underground economy and we were told that cigarette smuggling had become a major business. I don't think there's any doubt about that, in that it was so big that networks had been established that had become very sophisticated and could change their product lines. In the example of cigarettes, if taxes were reduced and smuggling of that product became less profitable, they could just shift to guns or drugs or alcohol or any number of other products.

You've mentioned the impact of the actions of the federal Liberal government in regard to revenue loss. However, I'm concerned that it may increase smuggling of those other types of products and I wonder if we're having any discussions with the federal government to avoid suffering the impact of unilateral actions we suffered from with respect to their actions to reduce cigarette smuggling.

**Hon Mr Laughren:** We've had no indication from them that they intend to do anything like that. Secondly, the Solicitor General, who's responsible for enforcement of course, has a task force with the federal government—I think with Quebec as well—to try and get a handle on it. Part of the problem is that no province—I'm not talking about Ontario here—has jurisdiction at the border. That's a federal government problem.

We have jurisdiction once that has occurred and that's why we've beefed up enforcement and fines when it happens here, when it's already here and there are infractions of the law. Every now and again I hear rumbles that Quebec might reduce alcohol taxes, but they



didn't do it in the budget, so my suspicion is that they've given up enough revenue on the tobacco and they'd be hard-pressed to give up more on alcohol.

**The Chair:** There are five minutes left per caucus.

**Mr Wiseman:** I'll be quick. On the tax-competitive comparison between Ontario and the US, I'm just wondering how extensive the comparative list is in terms of what taxes you look at. I know there are states and cities in the United States that levy 6.5% or 7% business taxes as well as personal income taxes at the city level and a municipal tax at the same time, property tax. We do that here. How extensive is this comparative list of taxes?

**Hon Mr Laughren:** I may ask for some help on this one, but just before I do, I always say that a comparison of taxes, unless you specifically say what we did there, that this is corporate income tax and this is payroll tax, where you can compare, is a bit of a mug's game, because as you say, it is hard to know.

I checked out of a hotel in New York City a couple of years ago when I was down there on a bond sale, and when the bill came to me and I signed the bill when I checked out, there was a tax of some 20% local and city tax that I had to pay which wouldn't show up on any comparison here.

Now, we have an accommodation tax too, of 5%, I appreciate that. But I'm not disagreeing that it's hard to make percentage comparisons unless you isolate the taxes you want to compare. I don't know whether anybody wanted to add anything to that.

Tom Sweeting is the director of our tax branch.

**The Chair:** If Mr Sweeting would like to come before a mike, Hansard would appreciate that.

**Mr Tom Sweeting:** I don't really have too much to add to what the minister just said. Basically, the comparisons that he showed took taxes and separated them, looked at corporate tax on its own and looked at payroll taxes. The approach to payroll tax is a fairly comprehensive one that tries to bring in not only formal payroll taxes as designed, but also payments that would be similar to payroll taxes in the US. It includes a number of different kinds of health and benefit payments that are paid in the US that may be paid by a tax in Canada to try and equalize, to recognize the fact that it runs the risk of being an apples-and-oranges comparison. The corporate tax comparison is quite straightforward; it simply looks at federal and state taxes.

When you get into more comprehensive comparisons where you try and put all the taxes together, it does become a question of selection. You need to look at what basis you want to approach and make some decisions about what you include if you're in a particular state. Do you go down and include a city's tax, for example?

We tend to use averages. The comparison at this particular point in time was more averages, where you sort of blend all of that in and it really tends to remove the influence of a lot of the outliers. It tends to be basically a federal and state comparison, although you will pick up aspects of the local governments.

**Hon Mr Laughren:** I think the payroll taxes on there included UIC and WCB assessments as well.

**The Chair:** Mr Sutherland, two and a half minutes.

**Mr Sutherland:** Minister, you may be aware that there's a document suggesting that somehow 725,000 jobs could be created over the next three years. If I look at the numbers you presented here, you said 350,000 new jobs over the next three years. Then I look at what you're saying, the amount of growth to occur. It seems to me that you'd have to be projecting somewhere over 8% or 9% growth a year to achieve that target. Does that number seem appropriate to you, and do you know of any forecasters who are projecting that type of growth level to occur?

**Hon Mr Laughren:** We did a comparison of what was in the horse sense revolution—

**Mr Carr:** No, that was the budget.

**Hon Mr Laughren:** —anyway, the Common Sense Revolution, and compared it to what's in our projections over that period of time. If I stray here, I'm sure people from the ministry will rein me back in.

1630

Because of the drag on the economy of your reduction in expenditures, there would be, over that same period of time, about 20,000 fewer jobs under that plan, your plan—no, there would be 20,000 fewer jobs because it will be a 0.04% reduction in growth rate because of the restraint. I'm not making up numbers here; that's in your plan. There would be actually 20,000 fewer jobs created over that period of time than from the direction in which we're going, the base we've established out there, which has higher spending and which does not reduce the deficit as fast as you do.

**Mr David Johnson:** That's one aspect.

**Hon Mr Laughren:** Yes, that's one of them.

**Mr Carr:** And then the tax cuts at \$4 billion would create how many jobs?

**Hon Mr Laughren:** I think your plan includes the off-book financing as well, just like ours does; I don't think it's different in that regard. I think it's very similar.

The reason I would not buy into the Common Sense Revolution is because I really do think it's a drag on the economy, not a stimulant for the economy. Coming out of the recession—the recovery is somewhat fragile and tentative—I think we all would agree that we don't want to be at 0.04%, which may sound like a low number, but it's still a drag on the economy rather than a stimulant. We would not want to do that to the Ontario economy at this time, when our priority is creating jobs, not reducing them.

**The Chair:** Mr Kwinter, you have 14 minutes.

**Mr Kwinter:** Treasurer, as always, I'm delighted to have the opportunity to discuss your annual document. I think you will acknowledge, as I have always maintained, that the budget of the government of Ontario is a political document as opposed to a fiscal document.

**Hon Mr Laughren:** Would you tell Gerry that, please?

**Mr Kwinter:** I'm just saying you have made the case that the auditor has nothing really to say about the budget; he has to say about your financial statements. So



I'd like to deal with your budget in a political sense, in the sense that my colleague the member for Scarborough-Agincourt sent you some questions. I don't want to deal with those unless I have time, but we would hope that you would respond to them.

**Hon Mr Laughren:** Yes, we will.

**Mr Kwinter:** I do have some questions I would like to just get some clarification on. One of the things you talked about earlier this afternoon was Highway 407 and this innovative way that you're financing it. Yet it is my understanding that the province of Ontario is going to be guaranteeing the debt of the consortium that is going to be building that highway. Is that correct?

**Hon Mr Laughren:** We arrange the financing that will be required to do that, yes, because when we originally sent out the request for proposals—and if I get into trouble, Jay will help me out here, I hope—the intention was that the private sector would do the financing totally, arrange the financing, everything.

When the proposals came back in, it was apparent that the cost of them borrowing for the project as opposed to us doing the borrowing through the financing authority we have would be more and would mean that the project would cost more and totals would be higher and so forth. So we went back to the drawing board on that part of it and said it makes more sense for the Ontario Financing Authority to do the arranging of the financing rather than the consortium.

**Mr Kwinter:** When you say “arranging of the financing,” to put it in the crass vernacular, are you going to be on the hook for that debt?

**Hon Mr Laughren:** Yes, we do the borrowing, that's it, but I hasten to add that there are all sorts of cautions, guarantees, provisos, whatever, built into the agreements.

**Mr Kwinter:** At the end of the day, the province of Ontario is going to have to carry the obligation for that debt if the worst-case scenario happens. The reason I ask that question is that in your comments about this innovative financing, you said, “We couldn't do it so we had to go to the private sector.” You went to the private sector and you wound up doing it.

If it's really just a matter of financing, there's no reason why you couldn't do everything that the private sector is doing. Go out and put it out to contract, get this innovative kind of structure to build it. But at the end of the day, you are the one who is going to have to deal with, just like the SkyDome, where you gave away the thing for a quarter of what it was worth.

**Hon Mr Laughren:** You're got a lot of nerve raising the SkyDome, Monte.

**Mr Kwinter:** No, listen: You made the decision. What I'm saying to you is that I'm just trying to understand. The only reason, it would seem to me, that you would go this route of getting the private sector in, having it collect the tolls, was because it would take you away from the responsibility of any financial obligation. You would get this highway that was built quicker, was built by the private sector because it could do it better, faster, cheaper, and it would be of no cost to the taxpayers; it would be on a user-pay basis.

What you've got is the taxpayer being on the hook for the debt. You've still got taxes in the form of tolls. It's a tax.

**Hon Mr Laughren:** No, it was there anyway.

**Mr Kwinter:** I don't understand the rationale.

**Hon Mr Laughren:** I'm going to ask Jay to respond to it, but before I do, remember that regardless of whether we did it through the Ministry of Transportation or this way, there would still be tolls. We said that it was going to be a toll highway; that was the only way we could afford to do it. At the end of the day, it's still a provincial highway. Of course, even if it was the private sector out there, totally on its own hook doing it, the province is still there, ultimately responsible for that highway. But let me ask the deputy—

**Mr Kwinter:** Just before he does, I want to make one more comment. The private sector are not Boy Scouts and are not Mother Teresa and they're not out there for the good of their health. If they're in this thing, they're in it because they see themselves making a profit, and that's fair. I have no problem with them doing that. But you'd think that they would at least be at some financial risk. With the province of Ontario guaranteeing it, then what you have is the private sector having a fail-safe funding mechanism guaranteed by the province. They are going out and using the creditworthiness of the province to enhance their profit. As I say, I have no problem with it going private sector. I think that would be great, but let them take some risk.

I had exactly the same complaint about the casino. There is no downside. Right now the casino is flying, but as I said during the hearings, give it a bit of time and get some more casinos going and get Detroit with a casino and it may be problematic. The operators have no financial risk. It's all on the head of the taxpayer. This is exactly what's happening with this, and that's my concern.

**Hon Mr Laughren:** Okay. But the reason that it's a good idea to let Mr Kaufman answer is that he's been involved in both of those issues.

**Mr Jay Kaufman:** Let's deal with the 407 first of all. When the RFP was issued, there was some expectation that the private sector would come forward with financial schemes that didn't require recourse to the province's credit. The proposals that came in did. Both proposals wanted provincial guarantees and support for the venture. Faced with those proposals, the option of looking at the cost of that debt then obviously became of paramount importance.

If we were going to be exposed as the province, then clearly the responsibility that we would have is to make sure that we got financing for the road at the cheapest possible price. That was ultimately the decision that was taken, that it was cheaper for the province to finance the 407 than to have the private sector do it with our backstop. It was not a situation in which the private sector was fully on the hook for the full financing, absorbing all the risks. The province was substantially at risk and therefore clearly we wanted to minimize those risks.



In fact, the private sector builder-operator is at risk. They have provided us with a guaranteed maximum price, and if they don't deliver on that guaranteed maximum price, clearly they are at financial risk in that situation.

1640

From day one, as the Finance minister has said, this has been a toll road, and the tolls are designed to fully fund the costs of doing the 407. So I think that's the framework, and it's a sound, businesslike framework that's resulted from the process, in which decisions that were taken were to minimize the both of the construction, get a guaranteed maximum price and ensure that financing would be in place at the lowest possible cost to do the job.

In the case of the Windsor casino, in fact the operators clearly have risks. They are required as part of their agreement to provide 25% equity investment against the project. So if the project gets in trouble, their money is as much at risk as the operation. So it's not accurate to say that the operators are not at substantial risk.

Beyond that, you're talking about operators who are major international casino operators. Clearly, you're going to be concerned about the success of these operations, and part of the rationale for choosing this consortium was that they had very substantial strength in the marketplace and could withstand the kind of competition that is likely to come from across the river.

**Mr Kwinter:** Can I ask you a question? How much was the budget for the conversion of the art gallery for the casino: the budgetary cost for the conversion?

**Mr Kaufman:** I don't have that at hand.

**Mr Kwinter:** Well, I'll tell you what it is.

**Mr Kaufman:** We can get you that information.

**Mr Kwinter:** It was \$8.6 million.

**Hon Mr Laughren:** Yes, it was something around \$8 million, and it ending up costing over \$20 million, I believe.

**Mr Kwinter:** How much?

**Hon Mr Laughren:** I don't have the number in front of me, Monte. But let me tell you something: All of that will come right out of the operations of the casino. It's not going to come back on the taxpayers of the province, because if there's one lesson we learned, and I don't want to be particularly mean here in these friendly environments, but I want to tell you, we learned a lesson from the SkyDome, and that's why we built in the protections both on Highway 407 and on the casino. The taxpayers of this province must never, ever again be subjected to that kind of deal, where there was no protection whatsoever on cost overruns. It was a disgrace, Monte, and you know it.

**Mr Kwinter:** Mr Treasurer, if we can leave this with one last comment, at the hearings I was told by the assistant deputy minister that if we insisted on protection from the operators, we couldn't get anybody to do it, and when the bill came forward and we tried to get an amendment that ensured that the province would not be liable for any of the downside of the operations, we couldn't get that passed. It was defeated. I don't want to

deal with this revisionist history, and I'm telling you that the province is on the hook, and if you check it, you'll see that you are.

But I'd like to get to a couple of other issues before we leave. Could you tell me, when was the most current Standard and Poor's assessment of the risk of Ontario financing?

**Hon Mr Laughren:** Just about a week ago.

**Mr Kwinter:** Oh, no, no. I'm saying prior to that.

**Hon Mr Laughren:** Prior to that? November.

**Mr Kwinter:** And at that time there was a downgrade.

**Hon Mr Laughren:** I don't think so.

**Mr Kwinter:** It went to AA- at that time.

**Hon Mr Laughren:** I thought that was done earlier.

*Interjections.*

**Hon Mr Laughren:** Oh, you're right. It was downgraded by one notch in November.

**Mr Kwinter:** The point I'm making is, because this is a political document, you put the best spin on it, and I understand that. But you have to understand that in November, when Standard and Poor's had a good opportunity to see what was happening in the year, they made their decision, and when your budget came down, the decision was only, "Is it worse than the negative thing we thought about it that caused the downgrading, or have they in fact staunched the haemorrhaging and is it staying on an even keel?"

To portray the fact that this downgrade that happened in November is staying that way, as opposed to saying, "Now that Standard and Poor's has looked at our budget, they've given us an A+" with positive connotations and everything else—they've maintained the AA-, and I just feel that is something that really has to be acknowledged. It isn't as if this is a great thing: "Look at what's happened. Standard and Poor's has said that we're doing a fabulous job." In fact, they have just downgraded you in November and all they are saying is, "We think that you should still be at that level."

**Hon Mr Laughren:** Well, what they've said was, "We are reaffirming our existing rating of Ontario, with a stable outlook." To imply that they looked at the numbers in depth, which I think is what you're implying, if not saying, but because this is a political document, the budget, they didn't look at it in depth this time is factually incorrect.

**Mr Kwinter:** I didn't say that.

**Hon Mr Laughren:** Well, you implied that.

**Mr Kwinter:** I'm saying that your child comes home from school and he says: "Guess what? I had a D last year and I still have a D. I'm doing great. I could have had an E."

**Hon Mr Laughren:** Monte, everybody knows what the credit rating is: AA- by S&P, and all S&P said was, "We are reaffirming that rating with a stable outlook." They didn't say, "You're an AAA." We didn't say that. Everybody knows that we'd all be better off and happier if the province was at an AAA credit rating. We're at

AA—, and they've reaffirmed that and said that's a reasonable rating for the province, given their projections and given their revenue base, and they made compliments to us on our expenditure controls.

I think you're trying to portray it in a very negative way, and in fact I would say that what S&P has done is say to us: "You're on the right track. You've got your expenditures under control, you've got the deficit going down, you're coming out of the recession, Ontario's going to lead the way." Nobody's arguing with that. I would say that it's a very positive thing what's happened. It's at AA—, yes.

*Interjection.*

**Hon Mr Laughren:** They did.

**The Chair:** Mr Kwinter, your time is up.

*Interjection.*

**The Chair:** Mr Kwinter, your time has more than expired. I'll move to the Progressive Conservative caucus and Mr Johnson.

**Mr David Johnson:** Minister, let's go back to job creation for a little bit. We discussed that earlier, and we have to thank you for the endorsement of the Common Sense Revolution in the sense that your own document points out that with regard to the employer health tax—\$200 million it's going to cost you this year, 12,000 jobs created—that works out to about \$16,667 per job. Now, if you look at your capital budget, you're spending about \$4.1 billion, and according to your own numbers you will sustain 166,500 jobs. If we do that calculation, that works out to pretty close to \$25,000 per job.

So what you're showing—and this is not too surprising, because this is what, as you said, the business community is telling you, and what I think you said the labour movement is telling you even, to get both sides of the coin there, that we need to cut the taxes and by cutting taxes we create jobs. Your numbers show that the most efficient way is to put money back into the hands of business, back into the hands of people, consumers in particular, and create jobs. That's what the Common Sense Revolution is saying, so thank you for your endorsement.

**Hon Mr Laughren:** I would put to you that there are some limitations on that. Also, when you cut taxes, there is more slippage on the job creation than there is in direct government spending. We know that, because it doesn't always result in direct job creation. So we have to be a little careful of that. Also, we do lose \$200 million on the revenue side. That's netted out. We don't get that back.

If you're worried about the deficit, which I know that you are, and quite legitimately, you can't just go on slashing taxes and think that you're going to remove the deficit because of the increased economic activity. It doesn't work that way, and you know—I think you know—it doesn't work that way. You saw what your fiscal hero did, Ronnie Reagan in the United States—

**Mr Carr:** He didn't control spending in Congress. Congress continued to spend.

**Hon Mr Laughren:** Well, when he did it, his deficit went from \$40 billion to almost \$300 billion on an annual basis.

1650

**Mr Carr:** Also, he built up defence during the Cold War.

**Hon Mr Laughren:** So be very careful on extending the argument too far on the cutting taxes to gauge up.

**Mr Carr:** You're not being fair and you know it, Floyd.

**Hon Mr Laughren:** Tell your colleague there that he's cutting into your time.

**Mr David Johnson:** He's just raising some good points.

**Mr Carr:** I know you know the facts. I know you know, Floyd.

**Hon Mr Laughren:** I do.

**Mr David Johnson:** Any way you cut it, yes, there's a cost, \$200 million, to reducing the tax.

**Hon Mr Laughren:** Yes. That's all I'm saying.

**Mr David Johnson:** There's a cost of \$4 billion to the taxpayers in terms of the capital programs that you're putting forward.

**Hon Mr Laughren:** Yes.

**Mr David Johnson:** There's a cost either way. But in terms of job creation the most efficient way, according to your own budget, is to cut the taxes. I guess it's just too bad, from our point of view, that it was a very modest holiday as opposed to a tax decrease.

**Hon Mr Laughren:** Yes, it is a modest one. I don't disagree with that.

**Mr David Johnson:** Why don't you go a little bit further and do it right, as we're proposing? At any rate, you can contemplate that.

I want to shift to welfare just for a minute. Your figures show that employment will be up in 1993-94, this fiscal year, by about 62,000 more people employed. In your budget you've indicated that you're cracking down on the fraud in welfare and you indicate that you're saving \$350 million by managing welfare better and cracking down on the fraud.

Yet, if I look in the estimates, I see some \$6.8 billion allocated to social assistance in the 1994-95 estimates, as opposed to \$6.3 billion in the 1993-94 estimates. So there's an increase there of almost half a billion dollars over the previous year, which is almost 8%. Other than the interest rate, I guess it must be one of the fastest-growing major components of your budget.

This really shows that you don't have a handle on the welfare. My question to you is, with your employment growth and supposedly, as you say, your gains in the social assistance, which aren't apparent from the budget, how come we're not having lower welfare costs? Why are welfare costs continuing to go up?

**Hon Mr Laughren:** I think that's a fair question. Let me deal with the \$6.3 billion versus the \$6.8 billion first of all, because I think that needs clarification. We're still anticipating welfare costs of \$6.3 billion. The difference is almost entirely—there are a couple of components in it—a drug benefit component that comes through that program of drug benefit assistance to social assistance.



**Mr David Johnson:** Half a billion dollars?

**Hon Mr Laughren:** It's not all that, but there are some other components too.

**Mr David Johnson:** Case load growth?

**Hon Mr Laughren:** No, I'm talking only about the difference between \$6.3 billion and \$6.8 billion.

**Mr David Johnson:** I'm talking about the case load growth now.

**Hon Mr Laughren:** Oh, the case load growth? Yes, if you look at the numbers on there, it's gone through the roof; that's correct.

**Mr David Johnson:** You're projecting it's going to go up over the next year. You say you're managing welfare better, you're cracking down on the fraud, employment is up and yet your case load is still growing. How can this be?

**Hon Mr Laughren:** First of all, there have been some changes to the federal UIC. We think that put a hit on us of, if I recall correctly, about \$100 million just because of the changes in the federal UIC. We didn't create that. That was done to us.

Secondly, there is a lag, as we're coming out of the economy, on the social assistance costs; there's no question about that. We're not happy about the growth in the case load. There was a signal a couple of weeks ago that case loads were starting to drop, at least in Metropolitan Toronto; I haven't seen any province-wide numbers, to be frank with you, but starting to drop.

Yes, we're worried about that, and I know you will probably disagree with me on this, but that's why I believe that Jobs Ontario Training was the right program. It took people who were unemployed and whose UIC benefits had run out or who were on social assistance, and put them into a job with training attached, not simply a make-work project where they would be laid off and back on social assistance again. So I think that's the right track to be on.

The federal government is working with the provinces to see what can be done together in the reform of social assistance programs. It got derailed a bit for a while, and now I gather they've set up another meeting for I think the end of this month some time.

**Mr David Johnson:** It's still a mess.

**Hon Mr Laughren:** It's still a lot higher than it should be, yes.

**Mr David Johnson:** It just amazes me, with all the touting of the Jobs Ontario and the big infrastructure program, all the jobs you're creating and how you're cracking down on fraud, yet the welfare costs keep spiralling up and up and the welfare case load keeps growing.

**Hon Mr Laughren:** Think what it would be without those initiatives. On the social assistance, a lot of what we're trying to do is at the beginning of the process too, not just sending out people to crack down on welfare recipients. We know that, by any estimates I've seen, it's about a 3% rate of fraud.

We also have strengthened our enforcement on other kinds of fraud too: on white-collar fraud, on sales tax

fraud, on smuggling. It's not just social assistance, and I know you will want to talk about the kinds of fraud that happen in the business community as well. We're cracking down on that too.

I wouldn't want to leave the impression that we're preoccupied with people on social assistance engaging in fraud, but we do think we want to remove that as much as possible up front and avoid overpayments that are difficult to collect because they're on low income and so forth. We're trying to do it in a balanced way that doesn't make victims out of people on social assistance, because, by and large, people on social assistance do not want to be there.

**Mr David Johnson:** Minister, I wonder, just to shift to the non-budgetary loan-based portion of the capital budget, if you could tell us how much money will be flowing through the operating account to service the loans in the non-budgetary system. What I'd like is for five years. I don't want you to take up a whole lot of time here now, but just tell us roughly how much money's going to flow through the operating accounts. At the end of a five-year period, how much will be the outstanding principal in the non-budgetary loan-based account?

**Hon Mr Laughren:** I think your question's a good one. As we do the off-budget financing, there's repayment that's funnelled from each ministry's, which includes paying down the capital and the interest on those loans. That will be added to the operating budgets.

**Mr David Johnson:** Roughly how much are we talking about?

**Hon Mr Laughren:** This year, it's \$105 million. We can get you the five-year costs, if you like. We don't have them here.

**Mr David Johnson:** Afterwards, if you'd provide all that information. At the end of five years, how much principal will we be talking about?

**Hon Mr Laughren:** Yes, we can get that for you too.

**Mr David Johnson:** You don't know or you don't have it here?

**Hon Mr Laughren:** I don't have it here, no.

**Mr David Johnson:** Is all of this money going to flow through the operating account, or are you expecting the finance corporation, through tolls and fees—now, I notice Highway 407 isn't—

**Hon Mr Laughren:** That's different.

**Mr David Johnson:** It's in some project specifically, whatever that is.

**Hon Mr Laughren:** That's what we call non-recourse, standalone.

**Mr David Johnson:** For the Ontario Transportation Capital Corp, will there be any forms of tolls or fees other than payments through the operating accounts?

**Hon Mr Laughren:** You're talking about other than the 407?

**Mr David Johnson:** Yes, other than the 407. You don't know that?

**Hon Mr Laughren:** I'm not sure I understand—

**Mr David Johnson:** If you look earlier in your

budget, there are a host of other roads here that are subject to investments: Highway 69, Highway 17, the Queen Elizabeth Way, Highway 401. Are any of those going to be toll roads?

**Hon Mr Laughren:** No, that's not the intention. When I was in Ottawa last week, I guess it was the board of trade that asked me if we would proceed faster with 416, which runs from Ottawa down to the 401. This was after they'd insisted that we get the deficit down faster. I said not under the present plans, but if they had any creative ideas on financing, they should bring them forward. They said they were interested in doing that. But the answer to your question is no.

**Mr David Johnson:** So of all these projects listed on page 63 of the budget, you're assuring us here today that none of those major highway updates will involve tolls or any special fees for the users.

**Hon Mr Laughren:** Page 63, you're saying?

**Mr David Johnson:** Yes, 63.

**Hon Mr Laughren:** I don't want to mislead you here, so we're trying to find 63.

1700

**The Chair:** While the minister is looking for those figures, I just want to inquire of the committee members if they would like the staff to stay after 5 o'clock.

**Mr David Johnson:** Yes.

**The Chair:** I heard a yes.

**Hon Mr Laughren:** The only one that's planned, I understand, is 407. We don't have anything now. I don't want to preclude consideration in the future, but—

**Mr David Johnson:** So some of these may indeed be toll roads in the future?

**Hon Mr Laughren:** Well—

**Mr David Johnson:** That's what you're saying. That's fine; some of them may be.

**Hon Mr Laughren:** There are no present plans to do that though, Dave; that's what I'm saying. If that changes, it changes, but I don't want to—

**Mr David Johnson:** Maybe I can just—

**The Chair:** Mr Johnson, I have to say at this point in time that we've used all our allotted time. Mr Laughren has indicated that he has to leave at 5 o'clock. It's just a couple of minutes after 5 at this point in time. Mr Johnson did indicate that he had some questions for the Finance ministry staff.

**Mr David Johnson:** Mr Carr does as well.

**The Chair:** At this point, Mr Laughren, I'd like to thank you very much for taking time out of your busy schedule to be available for the committee members to make your presentation and for allowing time for questions.

**Hon Mr Laughren:** May I express my appreciation for the questions that came. They were interesting and, I think, pertinent, the questions that you asked. Mr Kaufman also has a prior commitment, but we have lots of people here who are specialists and will be glad to help you out as much as possible. Just don't keep them until midnight. Thank you all very much.

**Mr Kaufman:** The individuals who will be here are Bob Christie, who is the associate secretary of the treasury board; David Trick, who is the assistant deputy minister for taxation and federal-provincial relations; and Steve Dorey, who is our assistant deputy minister for economic policy. I'll leave you in their hands.

**The Chair:** Thank you very much, Mr Kaufman.

**Mr Sutherland:** Can I just ask a quick question? Is there another rotation for the time remaining or do we have only a couple of questions?

**Mr Carr:** Yes, we have a few.

**The Chair:** I'm in the hands of the committee members. I know that Mr Kwinter did indicate he had to go and I know some of our caucus members have to go.

**Mr Sutherland:** If they've just got a few questions, that would be fine. Just let them go and take it from there.

**The Chair:** Mr Trick, Mr Dorey and Mr Christie, I'd like to welcome you to the microphones. Mr Carr, you have some questions.

**Mr Carr:** If you keep the answers short, you should be in good shape. It's a taxation question. On page 3 one of the subtitles says, "Cutting Taxes to Create Jobs." If you were to cut the provincial income tax rate to put \$4 billion back in the hands of taxpayers, how many jobs would that create?

**Mr Steve Dorey:** In general, the job creation impact, at least in the early years of tax cuts, is substantially smaller than the impact of direct spending. If you have a very carefully targeted tax that hits, for example, only incremental activity like new jobs, then you can have a greater impact. I guess our estimate would be that \$1 billion, in terms of personal income tax, would create somewhere between 6,000 and 10,000 jobs.

**Mr Carr:** Yet, on the other side of it, you're saying that the payroll tax created more. Based on the income tax rate and assuming that it's based on a percentage of the federal income tax rate so it is progressive—the higher your income, you get it back—and assuming now that the higher-income people will then spend that money rather than people at the \$30,000 level who may not spend it and put it in investment, although I would submit to you that would help create jobs too if they were to invest it here in the province of Ontario, what you're saying, from an economic standpoint as the Ministry of Finance, is that at \$1 billion a tax cut will only give you 6,000 jobs. Is that what you're saying?

**Mr Dorey:** It would depend to some extent on how you structured it. I said 6,000 to 10,000 is a reasonable range. Most econometric models will give you those kinds of results.

**Mr Carr:** As you know, most economists would say it would be much higher than that, so I just wanted to get it clear. You're on the record now for the number of jobs that would be created, and you're the taxation expert. You think a \$1-billion tax cut would only create 6,000 to 10,000 jobs.

**Mr Dorey:** Certainly in the earlier years, yes.

**Mr Carr:** And how much over three years?



**Mr Dorey:** It wouldn't be much different from that over three years.

**Mr Carr:** Say 15,000, 13,000? It would go up progressively?

**Mr Dorey:** It would go up somewhat, yes.

**Mr Carr:** Bottom line, and I know this is difficult to do because you're doing your math in your head, by reducing the personal income tax rate from 58% down to the lowest in Canada, how many jobs would be created over five years? You can use the billion, because I can multiply it by four. How many jobs would a \$4-billion tax cut create over five years?

**Mr Dorey:** If you did that kind of arithmetic—I'm not sure that could go out five years—it would get you 50,000 to 60,000 jobs, I think. That would be the arithmetic. That assumes no offsetting effects, for example. It assumes that the deficit is allowed to rise by the resulting tax loss and so on.

**Mr Carr:** You know what I'm getting at. Ours doesn't, and I'll get to the other side of it as well. I just want to put the numbers together.

Now let's talk about the spending cuts. Let's say you cut spending by \$6 billion. You've done the tax cut of \$4 billion. Then you find cuts: \$1 billion from welfare by scaling it back to 10% of the national average over 30%—all the numbers work out. The Minister of Finance indicated that would cost jobs. The Treasurer seemed to be giving out large numbers. How many jobs do you, as somebody in this field—and it may not be you, if we're looking at expenditures. If we were to cut \$6 billion out of spending in the province of Ontario, how many jobs?

You know what I'm getting at. It's the numbers we did with social assistance, Jobs Ontario Training, non-profit housing. You know where the numbers are. Even the government members have read our document and most of them don't even read the government documents, so we're very pleased we got them to look at it.

*Interjection.*

**Mr Carr:** I know Mr Wiseman's going to have his grade 10 class look at it after the next election.

I said I'd be short, but I'm not. With \$6 billion cut out of expenditures, how many jobs would you say would be lost? Let's be perfectly honest. You've looked at our plan. You got how many jobs would be created, which the Minister of Finance didn't. How many jobs would be lost if we were to cut \$6 billion out, knowing where we cut it out of?

**Mr Dorey:** Again, I'm not sure we've gone through your plan in detail and said, "These kinds of cuts cost precisely this number of jobs."

**Mr Carr:** I can give you the numbers. Roughly \$1 billion in welfare, in terms of cutting back the benefit levels; about \$340 million by scrapping Jobs Ontario Training, because, unlike the Liberals, when we cut it, we know \$700,000 has already been spent; and about \$400 million out of education. You know the numbers, and some of the other numbers in there.

As a general rule, and I hate to pin you down, you've got the Minister of Finance saying the plan doesn't work,

and he's gone to you. With \$6 billion in cuts, how many jobs will that lose for us?

**Mr Dorey:** I don't think I can do that arithmetic on the spot.

**Mr Carr:** Could you do it and send it to us? Just so you know, I would compare it to other economists, because obviously you're not judged in isolation. You can say a number, and another economist would say something else. How the public will judge you is whether you're in the ballpark. What are your projections? I assume you can do that and send it to us.

**Mr Dorey:** Yes. I don't see why we couldn't.

**Mr Carr:** We want to be fair. I know you people aren't the political staff. We're going to throw it out there for the economists and we're going to use your figures with other economists'. It isn't going to be Gary Carr judging you or Floyd Laughren; it's going to be other people in your field, respected people, who will say, "Boy, this guy's way off." How we'll judge it is based on the average of the economists, and probably the most independent ones are those the public would believe. But we want to have some constructive debate. We would like to have the government's numbers, rather than just the politicians like us saying it'll create 725,000 jobs and the Minister of Finance saying it'll lose jobs.

I'd like to have some real debate among economists. If you could give us that information, we could share it with other economists, who could say, "Yes, the Ministry of Finance people are right on," or "The Ministry of Finance people are way out." That's what I'm getting at. If you could send that to us, it would be much appreciated.

1710

**The Chair:** I'd like to make the point that if any answers to questions posed by committee members could be sent to the clerk for distribution to all the committee members, that would be very much appreciated.

**Mr Carr:** That was it, my short and sweet questions. I have more, but I don't want to take too much time.

**The Chair:** We'll rotate. How many minutes were you? You were just over five.

**Mr Wiseman:** In terms of spending cuts, if you're going to cut the income tax, my thought would be that if you really want to stimulate and have the most effective multiplier with the cut of income tax, it should be reverse progressivity. In other words, you should cut the most from the bottom end, because it's more likely that people who are paying at the bottom end will use that money to go out and buy things in the market that they couldn't normally afford and that people at the upper end would probably buy treasury bills, invest offshore or would otherwise create a leakage in terms of that kind of money.

If that's the kind of thing you wanted to do, such as what the Conservatives are suggesting, have you any thoughts on whether my suggestions on what would happen in that regard are more accurate, or what kind of stimulus do you think would happen?

**Mr Dorey:** The impact of a tax cut—you're right—depends a lot on what people do with the money. In

general, the savings rate is substantially higher for high-income people, as you would expect, so more of the money is likely to go into savings. For low-income people, more of it's likely to be spent. So the net economic impact would likely be larger, if you cut taxes on low-income individuals rather than high-income individuals.

**Mr Wiseman:** If you had to cut \$500 million from the budget, as we had to do with the tax cut on tobacco, where in terms of stimulating the economy would that \$500 million have been better spent?

**Mr Dorey:** If you're trying to get desirable activity, if you target a tax cut on an activity and reward those people who carry out the activity, you'd tend to get more leverage than if it's a general cut that rewards people regardless of what they do. That's why the EHT cut, for example, only goes to people who hire additional net new workers, and therefore you'd get more impact than you would on a general cut.

**Mr Wiseman:** This chart is the one that is rather intriguing to me, the one where we're talking about "Large Multinationals Choose Ontario for Investment," and you say, "Alternatives Considered."

I know for a fact that the Clean Air Act in the United States has had a detrimental impact on the creation of big engines in cars in the United States because of the fleet averaging of the miles per gallon. They had to look somewhere, so they look here, or they look into Mexico now with North American free trade. For example, Mercedes built a plant in Mississippi, I think, or South Carolina.

**Mr Sutherland:** Alabama.

**Mr Wiseman:** Alabama. For them to get that, the local town had to buy  $x$  number of cars, so you've got the mayor wandering around in an \$86,000 car and you've got the police forces wandering around in \$86,000 cars.

**Mrs Irene Mathyssen (Middlesex):** You could have some wonderful high-speed chases.

**Mr Wiseman:** Really roadworthy. It's not realistic, as some political philosophies would suggest—and you don't have to comment on that, given that you're not political staff—to assume that we are going to be able to go: "Hey, we're laissez-faire. We're going to be capitalists. We're not going to give any kind of incentives. We're going to cut Jobs Ontario. We're going to cut grants. We're going to cut loan guarantees. We're going to cut all these things, and we're just going to let the market decide where it's going to go."

If that was the case, it would seem to me that Mercedes would've gone just about anywhere if the entire market was open like that. When we talk about "Alternatives Considered," what was it that tipped the balance to come here as opposed to going there? We know a place like Kentucky has slightly lower wages, and there are right-to-work states; Missouri is a right-to-work state, I guess. What are the various parameters? Why did they come here? What were the deciding factors in some of these cases?

**Mr Dorey:** It's difficult to generalize. There are a

variety of factors. In some cases it would be that costs are lower. Publicly provided health care is an important consideration for some of these firms. The quality of the workforce, certainly if you take the example of a firm that considers Mexico and Ontario, is a very big consideration. Quality of infrastructure is a consideration. In some of these cases the government has provided some assistance. There's a variety of reasons they would choose Ontario.

**Mr Wiseman:** In Fortune magazine, in October or November, they run the top cities for investment in the United States. They don't dare do Canada, because we'd probably blow them away in most of our cities. They talk about quality of life being one of the top parameters for investment in an area. In fact, taxation is one of the very lowest factors for investing in a community. Taxation and cost of labour in terms of wage packages are very low on the scale, because relatively speaking, there are other factors like energy and quality of life and desirability and infrastructure. For example, the 407 would be a major attraction.

A lot of people just look at this competitive thing and don't look at the other factors, but Fortune magazine does. I don't know if you've ever seen one of those, but it is interesting to read. When you start to compare that, Ontario looks very good, and that's why I asked about the taxes earlier on. Personal income tax and business taxes in the various cities and also the structure of government within some of the cities in the United States makes them very uncompetitive as well, because of the way they do their municipal taxes. It's an important factor, and I don't know how much you look at those kinds of things when we talk competitiveness or whether there's any kind of chart you can use.

**Mr David Trick:** I think you're exactly right to point out that there is a large number of factors that companies consider when they choose an investment location. I think you're also right to point out that for every individual company, the relative weight it assigns to different factors varies. It depends on what line of business you're in, what your business strategy is and so on. Clearly, taxes are a factor that almost all companies look at in one way or another, but for many companies they wouldn't rank in the top three or top five factors, and I think that's the import of your comment there.

**Mr David Johnson:** I do have more questions. Who do I submit those to?

**The Chair:** You can submit them to the clerk and she'll make sure they get to the right people.

**Mr David Johnson:** Thank you. I'm new at this yet.

The issue of the relationship between job growth and economic growth was raised earlier this afternoon, and I wondered what your view on that is. Is there a constant relationship between economic growth and job growth over any period of time—I see you're being written a note there right now—or if you look back over the last few years, would we see different relationships between the two, depending on circumstances?

**Mr Dorey:** Obviously, the relationship changes pretty substantially over the business cycle and depending upon



the relative costs of capital and labour and whatever other inputs you're looking at. Generally, productivity tends to rise and therefore the difference between the growth rate in output and the growth rate in employment tends to be larger earlier in the business cycle. Later in the business cycle, when you're operating at full capacity and so on, you tend to see them come together. I don't think there's a fixed relationship. The productivity performance in the province wasn't particularly strong through a good part of the 1980s and it has improved somewhat recently.

1720

**Mr David Johnson:** If I were to suggest that at this time the relationship might be pretty close to one to one, give or take—1% growth in the economy, 1% growth in employment—would that be far off, in your estimation?

**Mr Dorey:** Last year, we had growth in employment of 1.3%, a growth in the economy in real terms of 2.4%, so there's 1% difference or so. For this year, we're looking for job growth about the same, 1.2%, and output growth of 3.3%, so there's a difference of 2 percentage points for 1994.

**Mr David Johnson:** That's quite a difference. Anyway, I'll be interested to see your analysis.

As I understand the budget, the budget is saying that over the period 1995-97, at any rate, they expect job growth of about 117,000 per year, somewhere around 120,000 per year. I don't know if it extends beyond that for a couple of years. If the government's view is that employment growth will be about 120,000 per year, and if the Liberal plan reflects about 660,000 in employment growth over a five-year period—I could be wrong; I don't have in front of me—which is about 132,000 a year, and our plan, as has been noted, looks at 725,000 in terms of growth over a five-year period, about 145,000 a year, we're looking at a difference per year of somewhere in the vicinity of 25,000 jobs per year.

When you do the assessment Mr Carr has asked for, you might make it clear: With the kind of stimulus we're proposing in the form of tax cuts, would those tax cuts not account for the difference in the 25,000 jobs per year? It seems to me to be within the realm of possibility.

**Mr Dorey:** Certainly you have to look at the entire fiscal package, I would think.

**Mr David Johnson:** You'll give us your thoughts, but at this point you still feel that the 725,000 jobs, given that sort of stimulus, is high. Is that correct?

**Mr Dorey:** If the stimulus was taking place without the spending cuts, the initial direct impact would obviously be positive. The impact of a rising deficit can have a major impact on confidence, so it's hard to judge that. But you're also talking about large spending cuts, so I think you have to weigh the two together if you're going to do that analysis.

**Mr David Johnson:** And that's the analysis you said you would take a stab at.

**Mr Dorey:** Yes.

**Mr David Johnson:** Okay, I'll just leave it at that.

**Mr Sutherland:** Just two comments, picking up on Mr Johnson's. It seems to me too, though, that the model

that was used in the 1980s to look at the relationship between jobs and economic growth is not the exact same formula you can use in the 1990s, for the reasons you said: that much of the gains in growth here have been achieved through productivity gains rather than through the employment gains we saw in the 1980s. You did mention that some of the growth in the 1980s was a result of a significant productivity gain.

I get the sense that some people are still using the same 1980s model and that we're going to see the same degree of employment bounce back, not taking into account any of the restructuring that's gone on in the economy; that in some cases those productivity gains have been found at the expense of jobs, through technology etc or through different ways of doing business rather than through the gaining of jobs.

My other comment picks up on Mr Wiseman's. There was an article in the Toronto Star a little while ago that indicated about our savings rate being lower. The assumption that a significant tax decrease would all go into investment or into job creation is not necessarily valid, because with the savings rate being lower, people may take advantage of that to bump their savings up. Whether some of that goes into savings investments that stimulate the economy—maybe. But can you really predict all the slippages that may occur from a tax cut that won't go directly into some form of job creation?

**Mr Dorey:** A lot of factors go on in the real world that don't go on in econometric models, so sure, you're going to miss some of those things.

**Mr Wiseman:** That explains everything.

**Mr Dorey:** With respect to your comments on productivity, it's our view that productivity does create jobs. It doesn't cost jobs except in the short term. It creates jobs in the sense that it makes the economy more competitive and it also tends to raise incomes, which gives you more income to spend and also in turn generates jobs.

**Mr David Johnson:** I want to ask a question I forgot to ask earlier. I don't think they want to answer this, anyway. How many jobs will the repeal of Bill 40 create?

**Mr Wiseman:** That might be one of those things that the econometric model does not predict very well.

**The Chair:** I know Ms Mathysen would like to ask a very legitimate and very sincere question.

**Mrs Mathysen:** I'm not sure whether you can answer this. I noted in the document the reference to how important our health care system is in terms of giving us that edge, and that's something we've known for a very long time. There is a document floating around out there, and you may have heard of it, that talks about invoking a health care levy for people who earn over a certain level. I believe it was \$50,000 that was indicated in this document that's floating around.

I'm thinking in terms of the number of people who would be in that income category, number one, and wondering if that would be an adequate revenue base in order to support something as large as our health care system, which spends \$17 billion a year. If it's not, what happens?

Second, if there's a limited number of people who are actually paying those levies and they see no direct benefit for themselves, if they begin to feel they're carrying the entire burden of the health care system without gaining direct benefits, will there be pressure by them to opt out and look to a private insurer?

If you change the way we're funding health care now to this levy model, will we see it being underfunded? Second, is this the thin edge of the wedge to ending universality, creating such pressure that we start to see the whole system erode?

**Mr Wiseman:** You might want to leave the last part to somebody else.

**Dr Robert Christie:** I'm not as familiar as I ought to be with the proposal you were discussing.

**Mrs Mathysen:** It's revolutionary.

**Mr Wiseman:** It comes in a purple document.

**Dr Christie:** I'll defer to my expert tax colleague in the answer to this, but to the extent that one is seeking to raise money through a tax levy, whatever, solely on those earning over \$50,000 per year, that is roughly the range in which the provincial income surtax begins to raise funds, and \$17 billion is, if I am correct, more than the total we raise from all personal income tax.

The notion that one could fund all of health care—as I say, I'm not aware of the specifics of the proposal you're referring to. But the arithmetic of trying to raise from that surtax-paying population more than is currently being raised from the entire personal-income-taxpaying population—I cannot figure out what the rates would need to be, but obviously there would need to be very,

very, very substantial changes in rates to make that happen.

**Mrs Mathysen:** So we would see people simply saying: "No, I've had enough. There's no way I can put this kind of financial contribution into the health care system."

**Dr Christie:** Without having done the calculation as to what kind of marginal tax rate would be required, although knowing it would be very substantial, it's difficult to know what people's reaction would be to a tax rate like that, or, for that matter, if there exists a marginal tax rate that would raise that amount of money. I mean, within our tax system it may simply not be an achievable amount of money from that income group.

**Mrs Mathysen:** So we could challenge this concept on quite solid ground.

**Dr Christie:** Not having done the math, it's difficult for me to say.

**Mr Wiseman:** It's okay. They didn't do the math either.

**Mrs Mathysen:** I appreciate that. That helps me in terms of my understanding of their mathematical abilities.

**The Chair:** If there are no further questions, I would like to thank all the staff from the Ministry of Finance who took time out of their very busy schedules to be here to assist the Finance minister and indeed to assist the committee members in trying to find answers to some of their questions.

This committee stands adjourned until 10 am, June 2 next.

The committee adjourned at 1731.



## STANDING COMMITTEE ON FINANCE AND ECONOMIC AFFAIRS

\***Chair / Président:** Johnson, Paul R. (Prince Edward-Lennox-South Hastings/  
Prince Edward-Lennox-Hastings-Sud ND)

\***Vice-Chair / Vice-Président:** Wiseman, Jim (Durham West/-Ouest ND)  
Caplan, Elinor (Oriole L)

\*Carr, Gary (Oakville South/-Sud PC)  
Haslam, Karen (Perth ND)

\*Jamison, Norm (Norfolk ND)

\*Johnson, David (Don Mills PC)

\*Kwinter, Monte (Wilson Heights L)

\*Lessard, Wayne (Windsor-Walkerville ND)

\*Mathysen, Irene (Middlesex ND)

\*Phillips, Gerry (Scarborough-Agincourt L)

\*Sutherland, Kimble (Oxford ND)

*\*In attendance / présents*

### **Substitutions present / Membres remplaçants présents:**

Elston, Murray J. (Bruce L) for Mrs Caplan

Owens, Stephen (Scarborough Centre ND) for Mrs Haslam

### **Also taking part / Autres participants et participantes:**

Ministry of Finance:

Campbell, Terry, manager, policy coordination, financial services policy branch

Glomer, Harvey, manager, financial and business standards, credit unions and cooperatives branch

Owens, Stephen, parliamentary assistant to the minister

Savage, Lawrie, superintendent of insurance

**Clerk / Greffière:** Mellor, Lynn

**Staff / Personnel:** Campbell, Elaine, research officer, Legislative Research Service

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## Legislative Assembly of Ontario

Third Session, 35th Parliament

## Assemblée législative de l'Ontario

Troisième session, 35<sup>e</sup> législature

# Official Report of Debates (Hansard)

Thursday 2 June 1994



# Journal des débats (Hansard)

Jeudi 2 juin 1994

**Standing committee on  
finance and economic affairs**

**Comité permanent des finances  
et des affaires économiques**

Financial Services  
Statute Law Reform  
Amendment Act, 1993

Loi de 1993 portant réforme  
de diverses lois relatives  
aux services financiers

Chair: Paul R. Johnson  
Clerk: Lynn Mellor

Président : Paul R. Johnson  
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## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
FINANCE AND ECONOMIC AFFAIRSCOMITÉ PERMANENT DES FINANCES  
ET DES AFFAIRES ÉCONOMIQUES

Thursday 2 June 1994

Jeudi 2 juin 1994

The committee met at 1012 in committee room 1.  
FINANCIAL SERVICES STATUTE LAW REFORM  
AMENDMENT ACT, 1993

LOI DE 1993 PORTANT RÉFORME  
DE DIVERSES LOIS  
RELATIVES AUX SERVICES FINANCIERS

Consideration of Bill 134, An Act to revise the Credit Unions and Caisses Populaires Act and to amend certain other Acts relating to financial services / Projet de loi 134, Loi révisant la Loi sur les caisses populaires et les crédit unions et modifiant d'autres lois relatives aux services financiers.

**The Chair (Mr Paul R. Johnson):** Today we are dealing with clause-by-clause consideration of Bill 134. I thank the Progressive Conservatives and Liberals for giving their amendments to the committee this morning. The clerk has advised me that there will be an integrated copy of the amendments available this afternoon.

We start with government amendments to section 1.

**Mr Stephen Owens (Scarborough Centre):** I move that the definition of "corporation" in section 1 of the bill be struck out and the following substituted:

"'Corporation' means the Deposit Insurance Corporation of Ontario; ('Société')"

The reason for the amendment is for a clarification for easier translation into French.

**Mr Monte Kwinter (Wilson Heights):** I just want to get a point of clarification. Does this mean that OSDIC as we know it no longer will exist? Is this a replacement to OSDIC?

**Mr Imants Abols:** No, this is just a change of name. The corporation, as it exists now, will continue under the new act. This is just a change of name.

**Mr Kwinter:** I just mean will the OSDIC name be changed to this? Instead of the Ontario Share and Deposit Insurance Corp, it will be this name?

**Mr Abols:** That's correct.

**Mr Murray J. Elston (Bruce):** When we had a presentation from the coalition of caisses populaires, I think they also had a suggestion. There were three alternative names that could be used. I'm just sitting down now and I can't find my notes, but does this translate closely to what they had suggested be a single name?

**Mr Harvey Glower:** This is certainly one of the options.

**The Chair:** Any further comment on this amendment? All those in favour? Opposed? Carried.

**Mr Owens:** I move that the definition of "deposit

insurer" in section 1 of the bill be struck out and the following substituted:

"'deposit insurer' means the Deposit Insurance Corporation of Ontario; ('organisme d'assurance-dépôts')"

The reason is the same as with the previous amendment with respect to ease of translation.

**The Chair:** Any comment on this amendment? All those in favour of the amendment? Opposed? Carried.

**Mr Owens:** I move that the definition of "security" in section 1 of the bill be amended by striking out "or credit union" in the third and fourth lines.

The reference to "credit union" is deleted because "financial institution" is already defined in the bill to include a credit union.

**The Chair:** Any further comments? Does the amendment carry? All in favour? Opposed? Carried.

We have come to the point where we have all the amendments for section 1. Shall section 1 of the bill, as amended, carry? Agreed.

Are there any comments on section 2? Seeing none, shall section 2 of the bill carry? All those in favour? Opposed? Carried.

Any comments on section 3? Shall section 3 of the bill carry? All those in favour? Opposed? Carried.

Section 4 of the bill: Any comments? Shall section 4 of the bill carry? All those in favour? Opposed? Carried.

Section 5: We have two amendments, one from Mr Owens.

**Mr Elston:** Steve, before you begin, can I just ask for some direction? We didn't get a chance to get back to each other on how many amendments might be accepted on areas other than those you had filed. It's our desire in the Liberal caucus to move fairly quickly through this material, not to hold up the passage of the bill unnecessarily, although there are some general issues about which we would like to speak; for instance, the issue of "cooperative affiliate," which is going to be raised in a minute by our friends from the Conservative caucus and which was on their list to speak about as an issue.

Is there going to be a willingness on the part of the government to reasonably consider some of these amendments, or are we going to be into a long debate with very little prospect of changing further on these? If that is the case, is there some time frame for implementing some of these other changes when you further consider financial institutions in the province; for instance, a cooperative affiliate of a credit union?

**Mr Owens:** The quick answer is that in terms of how

I would like to proceed, there is an opportunity for some reasonable consideration. I'm not sure I quite understand your point with respect to implementation.

**Mr Elston:** Is it worthwhile filing all our amendments and actually arguing them, or are we just going to be filling in a lot of time? Basically, I want to know whether it's worth putting the amendments, that's all.

**Mr Owens:** If you're asking me to be arrogant—

**Mr Elston:** No, no, I'm not. I just want to be practical, because I can move a few more amendments but I just don't want to get into a protracted debate on something that has been considered. Maybe we could sit down, for instance, after today's clause-by-clause and actually pick out some that might be accepted. I just think it would save us a lot of time, because we really want this legislation to go and to get passed.

**Mr Owens:** That may not be a bad suggestion. If you have some ideas you would like to share, I'm prepared and I'm sure Imants and Harvey Glower are prepared to work with you.

1020

**The Chair:** Thank you. Mr Owens, with regard to section 5 of the bill and your amendment.

**Mr Owens:** I move that section 5 of the bill be amended by adding the following subsection:

"Affiliate by order

"(2) On application in writing by a credit union, the director may, by order and on the terms specified in the order, deem a corporate body named in the order to be an affiliate for the purposes of this act or for the purpose of specific provisions of this act.

"Revocation of order

"(3) The director may revoke the order if he or she believes that the credit union has failed to comply with a term set out in the order or that it is no longer appropriate to deem the corporate body in respect of which the order is made to be an affiliate."

This is an amendment that was requested by the credit union movement. I'll ask Mr Glower or Imants for something further.

**Mr Abols:** Essentially, the concern is that because of the nature of relationships between cooperatives, they don't fit the traditional model of a subsidiary-parent relationship. You can't have effective control of a cooperative because of the principle of one member, one vote.

Credit unions in this province, along with other cooperatives in other provinces, have interests in different corporate bodies, which may be organized along cooperative principles. There's no way to deal with their interests in those cooperative bodies.

What this amendment allows is for the director, on a case-by-case basis, to look at each situation and determine whether it's appropriate, in that particular case, to deem their interest in a particular corporate affiliate to be equivalent to an interest in a normal affiliate and therefore subject to the same sort of regulatory regime we provide for other affiliates.

**Mr David Johnson (Don Mills):** A question to the parliamentary assistant, or perhaps it's to you, Mr Chair.

As you know, we have an amendment coming up. If the government's amendment is carried, which I would say is somewhat likely, what would be the status of my amendment? How would the ruling be on that? Would you be prepared to accept that as well or would you then be ruling that out of order?

**The Chair:** We'll have to wait until your amendment is moved, Mr Johnson, and deal with it at that time.

**Mr David Johnson:** I was hoping for a somewhat more friendly response.

**The Chair:** I know that doesn't directly answer your question.

**Mr David Johnson:** It's fairly predictable.

**Mr Elston:** In fairness, Mr Chair, he can move that as an amendment to this particular motion. Subsection 2 could be amended by striking it out and adding his, if he wants to deal with it in that way. I guess the necessary question is, are the government amendment and Mr Johnson's suggested wording compatible, and does it make sure we accomplish what I think is a good idea?

**The Chair:** We don't know if this amendment is going to pass, to be fair.

**Mr Gary Carr (Oakville South):** Let's assume for a moment that it will.

**The Chair:** We can't.

**Mr Elston:** Move your amendment.

**Mr David Johnson:** Mr Chair, would you accept an amendment to the government's amendment at this point?

**The Chair:** Yes.

**Mr David Johnson:** Then I would move an amendment to the government's amendment.

I move that section 5 of the bill be amended, and the government's amendment be amended, by replacing subsection (2) of the government amendment with the following:

"Corporate affiliate

"(2) An entity is a cooperative affiliate of a credit union if such entity is operated and organized as on cooperative principles and is owned and controlled by:

"(a) such credit union and at least one other credit union or league;

"(b) such credit union's league; or

"(c) such credit union's league in association with other leagues or associations incorporated under the laws of Canada or any province thereof."

This is a suggestion or recommendation that's been brought forward by the Coalition of Credit Unions and Caisses Populaires of Ontario. They have expressed a concern that the definition of "affiliate" used in the bill, which I understand is a classic corporate law definition used in connection with corporations governed by the Business Corporations Act, in conjunction with the definition of "subsidiary," does not accommodate the majority of companies related to credit unions by virtue of cooperative ownership structures.

This is important because credit unions do rely on networking and strategic alliances with cooperative affiliates to provide members with a full range of finan-



cial services. The bill as it was originally printed did not specifically give cooperative affiliates equal status with subsidiaries and affiliates, and that's why we're proposing this definition.

Now, as I understand the government's amendment, it would allow the director to deem a corporate body to be an affiliate for the purpose of the act, but the credit unions would much prefer to have the matter dealt with in the statute as opposed to being left to the discretion of the director. This would specify exactly what the situation would be.

I think it's an approach that certainly would be much more favoured by the credit union movement. Consequently, I think it's a step beyond what the government's motion is proposing, and I would hope the government would look upon that in a friendly fashion and be able to support it.

**Mr Owens:** Thank you, Mr Johnson. Unfortunately, I can't accommodate your request. It's our view that this amendment is too broad and that it would perhaps allow, or enshrine in perpetuity in legislation, entities that we or the movement may or may not want enshrined as affiliates. I'll ask Mr Abols to comment.

**Mr Abols:** Our view is that the government motion accomplishes what the credit union movement wants in terms of accommodating and recognizing their interests in other cooperative affiliates. The problem is that the way your motion is drafted, though, it would basically, as Mr Owens suggested, enshrine for all time this one understanding of what a cooperative affiliate is. It may capture certain cooperative affiliates which, when we look at the operations of a particular cooperative affiliate, may not be appropriate; or with the nature of the interests of a credit union in a particular cooperative affiliate, it may not be appropriate to treat them as you would treat a subsidiary. The view is that the government motion provides a mechanism which is much more flexible and it can be dealt with on a case-by-case basis.

On the issue of networking, because you touched on that in the rationale as well, if you look at the section we have on the networking provision, we have again a mechanism whereby by regulation we can expand the scope of entities a credit union can network with. Again that part of the equation is also covered elsewhere in the act.

**Mr David Johnson:** The motion the government's put forward says "the director may"—the word is "may"—"by order and on the terms specified in the order, deem a corporate body named in the order to be an affiliate for the purposes of this act." Could you give us some direction about under what circumstances the director would do that? What sort of criteria would be used, so the credit union movement may have some understanding of how the director would act?

**Mr Abols:** I can only speak very hypothetically here, but, for example, if you do have an interest in a cooperative affiliate where the credit union's interest, notwithstanding the fact that it's a cooperative affiliate, effectively amounts to 50% or effective control of it, that would be very much analogous to a situation where the affiliate was a stockholding company and it had effective control through voting shares. You may have certain cooperative

affiliates where there are essentially just two members or shareholders and they each have one vote, but one vote effectively represents 50% control of that entity. So that's one criterion. There may be others where the threshold is lower than 50%, but because of the shared interest among several credit unions within Ontario, it would be appropriate to deem that cooperative affiliate effectively a subsidiary of each of those credit unions, notwithstanding that it wouldn't meet the traditional 50% voting control test.

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We want to see that kind of level of participation. If it's a cooperative affiliate which is essentially controlled by cooperative affiliates outside the province, I think we would have some concern about that because it's not a cooperative affiliate that comes within our jurisdiction, and we wouldn't be able to impose the prudential safeguards that we might want to because it's essentially a cooperative affiliate that operates outside the jurisdiction.

**Mr David Johnson:** I don't wish to hold up the proceedings here today either, because I do understand that there's a great deal of support for having this bill proceed, but again it gets back to the fact that many groups have expressed the desire to have the ground rules specifically written in the legislation so they understand what's happening. That's what we're attempting to do.

I know there was one deputation that said that we don't get the opportunity to revise the statutes very often, so perhaps we should leave them more flexible. But I think the majority opinion was that where possible, we should be as specific as we can. I think this is one area where the credit union movement feels that it could be more specific, that it could be written into the statutes. I guess I would simply ask the government to take a second look at it and see if there isn't something that could be accommodated through more specifics such as I proposed.

**The Chair:** Legislative counsel, Mr Yurkow, would like to make a comment.

**Mr Russell Yurkow:** I didn't really have any comment to make, other than to say that the two motions are not inconsistent with each other, the possibility of which I think was raised earlier.

**Mrs Karen Haslam (Perth):** I wasn't going to comment, except that I think I have to comment because I was here, and it was very clear that they felt there should be more flexibility in the legislation than being so precise.

The reason I remember it so clearly is because it was a question that I had raised. I had been on another committee where they were saying that they didn't want to see so much in regulations; they wanted to see it all in legislation. Then I came into this committee and the group was saying: "No, we don't agree with that; we think it should be more flexible in legislation and there should be more in regulations because it's easier then to address changes in the community and changes in the industry through changes in regulations, rather than waiting another 100 years to change the legislation."

I don't know where you felt that information came



from, because I remember very clearly; I even remember being in the room downstairs when we had that first meeting and that was the information they had passed on.

**Mr Kwinter:** I think there's sort of a contradiction in the original section and the amendments that are proposed. If in fact it is meant that this legislation should be flexible, then it would seem to me that section 5 should be eliminated and the proposed amendment should be the section. It should say, "On application in writing by a credit union, the director may, by order and on the terms specified in the order, deem a corporate body named in the order to be an affiliate for the purposes of this act or for the purpose of specific provisions of this act," which gives you the flexibility that you say you want.

The minute you have what you do have, where you actually spell out that if one of them is a subsidiary of the other or if both are subsidiaries of the same body corporate or each of them is controlled by the same person, you are being very specific. What it leaves is that by adding the amendments you have, it's really opened and it's at the discretion of the director. Someone who refers to the act to see whether or not he or she is eligible to be considered by the provisions in this act is really at the whim of the director of the day and what he feels or what the common practice has been, but that could change.

It would seem to me that if you're going to spell out some of the provisions, then surely the recommendations that have been made by the PC motion, where they add three more provisions, shouldn't be that constraining, because you're still going to add, I assume, your particular amendments, which still give the discretion to the director. But it would seem to me that you can't really have it both ways. If you want to have this flexibility, then I say take out the provisions that you have provided and put in the fact that it'll really be at the discretion of the director. If you want to see whether or not you qualify or whether you're a cooperative that qualifies, you write to us and we'll give you an order and then you follow the terms of the order. But by spelling out just what really turns out to be three possibilities and not others, I think you're really doing some of these other entities a disservice. I would certainly appreciate the comments of either the parliamentary assistant or the solicitor.

**Mr Owens:** I guess I fundamentally disagree with the premise that the director is going to operate on a whim and things may change from year to year or director to director. Again, this work is premised on a balance that's been achieved between the credit unions and caisses populaires movement. In terms of allowing the flexibility that has been requested by the credit union and caisses populaires movement, it's our view that this covers it off quite nicely. If one wants to imagine all the hypothetical situations that may come up in subsequent years, maybe we should just do this whole thing by regulation and try to capture the hypotheticals as they come along. Mr Abols, did you have any comments?

**Mr Abols:** My one observation on the suggestion that we go with the motion as the government has tabled it instead of having what we have in the bill is that the bill

is the standard, traditional corporate definition of what an affiliate is, and I think we have to be mindful of the fact that credit unions will still have interests in traditional corporations—that is, stockholding corporations, corporations under the Ontario Business Corporations Act or whatever corporate statute, the Canada Corporations Act—and those interests will be accommodated by that definition. So it's an automatic affiliate if they have a controlling interest.

There are really two situations; you're right in identifying that. One is the traditional stockholding and one is the cooperative entity. We're saying, with respect to the cooperative entity, the mechanism we see as working best is one where it's an administrative decision on whether a particular cooperative entity should be treated as an affiliate, because with certain cooperative affiliates, depending on the nature of their business and the nature of a particular credit union's interest, it may not be appropriate to treat them as affiliates, as you would an OBCA corporation. But this definition, though, if you accepted your motion, would constrain that, and we may let things in that we may regret later on.

The whole concept of how you account for cooperative affiliates is a fairly new one, and that's why we feel that it's necessary to take a somewhat more prudential approach to it and allow the regulator some flexibility.

**The Chair:** Any further debate? Seeing none, shall the amendment to the amendment carry? All in favour? Opposed? It's lost.

Is there further debate on the government amendment? Shall the amendment carry? All in favour? Carried.

Shall section 5, as amended, carry? Carried.

Shall section 6 carry? All in favour? Carried.

Shall section 7 carry? All in favour? Opposed? Carried.

Shall section 8 carry? All in favour? Opposed? Carried.

Section 9 of the bill has an amendment. Mr Johnson.

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**Mr David Johnson:** I move that the bill be amended by adding the following new section:

"Appeal of decision

"9.1 An appeal of any decision made by the director under this act shall be to an arbitration panel consisting of three persons; one of whom is appointed by the credit union; one of whom is appointed by the ministry and one of whom is appointed by agreement of the aforementioned appointees."

This again is a suggestion brought forward by—

**Mr Elston:** Excuse me. On a point of order, Mr Chair: This is a new section, which will follow section 9, so shouldn't we deal with section 9 first? This is not dealing with an amendment to 9. He doesn't want to replace 9. This is an addition after 9. So I think we should deal with 9 first and then come back to Mr Johnson.

**The Chair:** I believe that is in order, Mr Elston. So, Mr Johnson, if you will just hold that thought and we'll come back to your amendment.

Shall section 9 carry? All those in favour? Opposed? Carried.



Now, Mr Johnson, I don't believe it's necessary that you re-read what you've already read. However, this would be a new section of the bill, section 9.1

**Mr David Johnson:** In terms of the rationale, we were discussing just previously the role of the director, so perhaps this flows quite naturally from that discussion. I guess, as Mr Kwinter has pointed out, although Mr Owens has disagreed, there's a possibility of directors changing attitudes or approaches or whatever over a period of time, and it raises the possibility of someone who disagrees with a decision perhaps of the director.

The Coalition of Credit Unions and Caisses Populaires of Ontario has put forward this particular suggestion, that there be an appeal mechanism, and that's what I've outlined in the motion. The act does give the director very broad and discretionary powers but as it is currently worded does not provide for any mechanism for an appeal. That's what I'm proposing, to establish that sort of mechanism, which I think is something that probably, hopefully, the government could support, and that this panel of three would render a final and binding decision.

**Mr Owens:** I'm afraid, Mr Johnson, that we are unable to support the amendment. I think there have been some fairly intensive discussions with ministry staff and the coalition of credit unions and caisses populaires, and it's our view that in terms of the appeal mechanism in fact there may be situations that fall under the rubric of good prudential management that would be obviated by language like this if you allow appeals to take place with no end in sight. It's our concern that in terms of the stability of a credit union and depositor security, this would not be helpful in that sense.

**Mr Elston:** I think I would like to have some indication if this is a normal addition to the public service. I was just trying to run through my mind the various places where administrative decisions are made, not just in this area, but we have superintendents of insurance, we have registrars of vehicles. Arbitration is not generally the route. Sometimes there's an appeal to the Commercial Registration Appeals Tribunal, for instance, if there's a refusal of a registration, things like that. The arbitration process for me would be kind of a new adventure, and I wonder if there is a sense that arbitration is wrong, or is it just the sense that you would far sooner leave the director, as has been the case to this point, as being the final authority on items like this?

**Mr Owens:** I'll go to ministry staff.

**Mr Abols:** I think the position, though, has been a little bit overstated. The director isn't the final authority with respect to a lot of issues. On the face of this, if this were to be passed, you'd have to really make numerous consequential amendments, because indeed if you look through the act, there are a number of places where the director's power is circumscribed by way of an appeal to either another senior official, the superintendent of deposit institutions or to the court.

In any case, any administrative decision in terms of administrative fairness, as most members would probably know, is appealable to the courts since they have that responsibility to review any unfair exercise of discretion by a person with a statutory power of authority.

There are already appeal mechanisms with respect to certain orders throughout the act. They'd either be to the superintendent of deposit institutions or to the courts. There's always the general oversight by the courts of any administrative discretion exercised by a statutory official. There are certain instances where there is no appeal mechanism and those cases are deliberate choices where the view is that these are fundamental operational decisions where you have to make the decision quickly and, in a sense, the buck stops right there. It has to stop there; otherwise other bucks will—

**Mr Elston:** Is it fair to say that the menu of appeal mechanisms, at least as now in the legislation, is not too often successful, nor can it be successfully used, and that's why the expression by the coalition, for instance, of an attempt to get another venue?

**Mr Abols:** I can only speak from my own personal experience working in the ministry. That hasn't been the case, simply because actually there haven't been that many appeals from certain specific statutory decisions. I think generally the branches I observed the ministry operate do so in an attempt, first of all, to achieve a certain end through moral suasion and through negotiation and so on.

I can only also observe that the regulatory regime we've set out is comparable to one found in other legislation governing financial institutions. What we have here is no more or less draconian than any other.

**Mr Elston:** This would take the credit union and caisses populaires organizations into an area that would be similar for stock companies or other financial service providers federally?

**Mr Abols:** Other financial service providers, yes.

**The Chair:** Any further debate on the amendment, new section 9.1? Seeing none, shall section 9.1 of the bill carry? All in favour? Opposed? That's defeated.

Shall section 10 of the bill carry? All those in favour? Opposed? Carried.

Shall section 11 of the bill carry? All those in favour? Opposed? Carried.

Shall section 12 of the bill carry? All those in favour? Opposed? Carried.

Shall section 13 of the bill carry? All those in favour? Opposed? Carried.

Shall section 14 of the bill carry? All those in favour? Opposed? Carried.

There's an amendment to section 15.

**Mr Owens:** I move that subsection 15(2) of the bill be amended by striking out "issuing" in the fifth line and substituting "the minister issues."

This is a clarification or a tightening up of the language with respect to only the minister is able to issue a certificate of incorporation.

**The Chair:** Shall the amendment carry? All those in favour? Carried.

Shall section 15, as amended, carry? Carried.

Shall section 16 of the bill carry? All those in favour? Opposed? Carried.

Shall section 17 of the bill carry? All those in favour? Opposed? Carried.

Shall section 18 of the bill carry? All those in favour? Opposed? Carried.

An amendment to section 19.

**Mr Owens:** I move that subsection 19(2) of the bill be amended by striking out "subsection (3)" in the first line and substituting "subsections (3) and (5)."

Subsection 19(2) is amended to ensure that it is subject to the grandparenting provision in subsection 19(5). Subsection 19(5) permits credits incorporated before the bill comes in force to use the name under which they were incorporated, notwithstanding that it may violate the requirements in section 19.

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**The Chair:** Any debate on this amendment?

**Mr Elston:** An item of information as opposed to debate: Are there going to be many that will be offside? One or two?

**Mr Owens:** In terms of name?

**Mr Elston:** Yes, name. This is just sort of precautionary, is it? I don't mind making the amendment as long as it's necessary, but if there aren't any in existence, why would we do it?

**Mr Glower:** I think there are two or three that may find themselves at some point in time being a credit union as opposed to a caisse populaire, therefore carrying the name of caisse populaire, and it's certainly the view of the caisse populaire that this should not be so, given the new definition of a caisse populaire. So we support the coalition's request.

**The Chair:** Shall government amendment to subsection 19(2) carry? Carried. Further amendments to 19?

**Mr Owens:** I move that subsection 19(5) of the bill be amended by striking out "A" at the beginning and substituting "subject to subsection (3), a."

This is a limiting clause. In terms of the use of the phrase "caisse populaire," unless these financial institutions that are currently using the name fall under the conditions set out in subsection 19(3), they will not be allowed to use the name "caisse populaire."

**The Chair:** Any comments? Seeing none, shall the amendment carry? Carried.

Shall section 19, as amended, carry? All those in favour? Opposed? Carried.

An amendment to section 20.

**Mr Owens:** I move that subsection 20(2) of the bill be amended by striking out "leagues" and substituting "the prescribed persons or entities."

The explanation is that federally incorporated cooperative associations may operate in Ontario and use "Credit Union" or "Caisse populaire" in their name. I guess by way of example, Credit Union Central of Canada is a federally incorporated entity. However, this amendment will allow an exemption for entities such as Credit Union Central to continue to use that name.

**The Chair:** Comments? Shall the amendment carry? All those in favour? Opposed? Carried.

Shall section 20 of the bill, as amended, carry? All those in favour? Opposed? Carried.

Shall section 21 of the bill carry? All those in favour? Opposed? Carried.

Shall section 22 of the bill carry? All those in favour? Opposed? Carried.

Shall section 23 of the bill carry? All those in favour? Opposed? Carried.

Shall section 24 of the bill carry? All those in favour? Opposed? Carried.

Shall section 25 of the bill carry? All those in favour? Opposed? Carried.

Shall section 26 of the bill carry? All those in favour? Opposed? Carried.

Shall section 27 of the bill carry? All those in favour? Opposed? Carried.

Shall section 28 of the bill carry? All those in favour? Opposed? Carried.

An amendment to section 29.

**Mr Owens:** I move that subsection 29(3) of the bill be amended by striking out "officer" in the fourth line and substituting "employee."

This was an issue that was raised by the credit union movement and caisse populaire movement. It was the view that it would be far too onerous for officers of a credit union to be issuing approvals on membership applications.

**The Chair:** Any comments? Seeing none, shall the amendment carry? Those in favour? Opposed? Carried.

Shall section 29 of the bill, as amended, carry? All those in favour? Opposed? Carried.

An amendment to section 30.

**Mr Owens:** I move that subsection 30(2) of the bill be amended by striking out "a person, related persons" in the first and second lines and substituting "persons."

In the aim of brevity of language, this simply removes superfluous language.

**Mr Kwinter:** On a point of order, Mr Chair: I apologize. I'm at subsection 29(3) and have a little concern. I wonder if we could go back to that for a minute.

**The Chair:** Is there unanimous consent to revisit section 29 of the bill? There is. Mr Kwinter.

**Mr Kwinter:** Let me tell you the concern that I have. There is a general feeling when we talk about credit unions that they're all fairly substantial organizations and are of some substance with a whole hierarchy of people, and the feeling that it might be inconvenient to have an officer approve these things and that it should just be an employee.

My concern is that there are some very small credits unions or even some medium-sized ones where because of the nature of the credit union, because it is a special relationship where everybody knows everybody else, there could be someone who is technically an employee who can give an approval even though he or she is not an employee who has any relationship whatsoever to the functioning of the banking side of the credit union.



It would seem to me that there should be something a little bit more specific, something like a "responsible" employee or an "empowered" employee. I just feel, if you put in "an employee," that, without trying to put a worst-case scenario, a brother and a brother-in-law get together and he says: "Look, I'm an employee of the credit union. I may just be the maintenance guy, but I'm an employee under the act and I approved it."

I have no problem with the fact that an officer may not be available, but it would seem to me it should certainly give some specific guideline that it's got to be an employee who at least understands what is going on in the credit union and is making this decision based on some reasonable experience in what he or she is doing. I'd like to get your comments on that.

**Mr Owens:** I think, Mr Kwinter, if you look at the bill as printed, the language contained in subsection 29(3) addresses your concern:

"(3) Subject to subsection (1), no person shall become a member of a credit union until the person's application for membership has been approved by the board or an officer authorized by the board and the applicant has complied fully with the bylaws governing the admission of members."

It's our view that this language addresses the very issue of the brothers-in-law working in the same plant and one being an employee of the credit union as well, in that the person accepting memberships would have to be designated by the board as being the person empowered to accept those applications.

**Mr Kwinter:** Thank you.

**The Chair:** Continuing with section 30, Mr Owens has read the explanation. Any comment? Shall the amendment carry? All those in favour? Opposed? Carried.

Shall section 30, as amended, carry? All those in favour? Opposed? Carried.

An amendment to section 31.

**Mr Owens:** I move that paragraph 2 of subsection 31(1) of the bill be amendment by striking out "and ratified"—

**The Chair:** Mr Owens, I just want to interrupt you. We have four amendments to subsection 31(1). I believe you may be beyond the first one, but I'm not sure. My apologies. You're right on line, and please continue.

**Mr Owens:** Thank you for allowing me to take a breath, though.

I move that paragraph 2 of subsection 31(1) of the bill be amended by striking out "and ratified by at least two thirds of the votes cast at a meeting of members called for that purpose" in the last three lines.

This is a consequential amendment. The requirement that admission of persons who fall outside the bond of association be ratified by members is omitted.

**The Chair:** Any comments on that amendment? All those in favour of the amendment? All those opposed? Carried. The next amendment, Mr Owens.

1100

**Mr Owens:** I move that subsection 31(1) of the bill

be amended by adding at the beginning "If the credit union's bylaws permit it to do so."

Subsection 31(1) has been amended to delete the requirement that the admission of persons who fall outside the bond of association be ratified by the members. The credit union's bylaws, however, must still authorize the board to admit such persons.

**The Chair:** Comments? Shall the amendment carry? All those in favour? Opposed? Carried.

**Mr Owens:** I move that subsection 31(2) of the bill be amended by striking out "Subject to subsection (4)" at the beginning.

Again, this is a consequential amendment that arises from the deletion of subsections 31(3) and (4).

**The Chair:** Any comments? Shall the amendment carry? All those in favour? Opposed? Carried.

**Mr Owens:** I move that subsections 31(3) and (4) of the bill be struck out.

Again a consequential amendment, in that once a person is admitted by the board, he or she would enjoy all rights of membership, including the right to vote at members' meetings.

**The Chair:** Any comment? Shall the amendment carry? All those in favour? Opposed? Carried.

Shall section 31, as amended, carry? All those in favour? Opposed? Carried.

Shall 32 of the bill carry? All those in favour? Opposed? Carried.

An amendment to section 33.

**Mr Owens:** I move that subsection 33(1) of the bill be amended by adding after "person" in the first line and in the sixth line "or entity."

It's hard to believe, but with the excellent work of Mr Glower and Mr Abols there is a technical oversight in that this inclusion of the word "entity" ensures that not only can legal persons and natural persons join a credit union, but an unincorporated organization may also do so; and the other word, "entity," is defined in the bill.

**The Chair:** Any comments? Shall the amendment carry? All those in favour? Opposed? Carried.

Shall section 33 of the bill, as amended, carry? All those in favour? Opposed? Carried.

An amendment to section 34.

**Mr Owens:** I move that subsection 34(2) of the bill be struck out.

Subsection 34(2) has been deleted because, unlike previous sections of the bill which permit persons who subsequently fall outside the bond of association to retain membership, it would not be susceptible to the interpretation that admission of corporate and partnership members must come within the 3% basket established under section 31 of the bill. Persons admitted under section 34 will also have come within the bond of association as well as meeting certain prescribed terms. I think I'll ask Mr Abols to translate that great paragraph.

**Mr Abols:** Essentially, what 34(2) does now is say that if you're a person who joins a credit union as an unincorporated association or the queen or what have

you, you're not counted as a person who falls outside the bond of association and thereby eats up the 3% grace that a credit union has for admitting persons outside that bond. There's no need to say what we say in subsection (2), that these persons, if admitted to membership, do not form part of that 3% group, because the terms of membership would allow entities like this to join and they would effectively be within the bond of association.

**The Chair:** Thank you. Comments? Shall the amendment carry? All in favour? Opposed? Carried.

Shall section 34 of the bill, as amended, carry? All those in favour? Opposed? Carried.

Shall section 35 of the bill carry? All those in favour? Opposed? Carried.

Section 36.

**Mr Owens:** I move that subsection 36(1) of the bill be amended by inserting after "ballot" in the fourth line "ballot in each branch."

It's the view of the government and the credit union-caisse populaire movement that we want to enable maximum participation in the credit unions. This will allow balloting at different branches of a credit union but not necessarily by the same person at the same time.

**The Chair:** Any comments? Shall the amendment carry? All those in favour? Opposed? Carried.

**Mr Owens:** This is not the vote early, vote often clause.

**The Chair:** Section 36, another amendment?

**Mr Owens:** I move that section 36 of the bill be amended by adding the following subsection:

"Regulations

"(3) The Lieutenant Governor in Council may make regulations governing mail balloting, balloting in each branch and balloting by electronic means."

Section 36 is further amended by providing an enabling authority, through regulations, to govern mail balloting and the kinds of balloting that will go on in credit unions. With the technology that is currently coming on stream, we want to be able to address new and improved methods of balloting with respect to that technology.

**The Chair:** Any comments? Shall the amendment carry? All those in favour? Opposed? Carried.

Shall section 36 of the bill, as amended, carry? All those in favour? Opposed? Carried.

Shall section 37 of the bill carry? All those in favour? Opposed? Carried.

Shall section 38 of the bill carry? All those in favour? Opposed? Carried.

Shall section 39 of the bill carry? All those in favour?

**Mr Elston:** One moment, before we take the vote on 39. I was just actually trying to take a quick peek through a couple of items that were filed, in this case by the Ukrainian Credit Union, which had noted under 39 that they thought perhaps we should be careful to ensure that a named beneficiary of a trust not also be included in the 3% leeway of people outside the bond.

I wonder if we could have an opinion as to whether or not that step should be taken to make it clear in that case

that we don't have a problem. I was just quickly going through this and passed it. I hadn't had time myself to go deeply into this because it has just been raised by the new material file.

**Mr Abols:** I don't think it is necessary in this case, because, again, the beneficiary is indeed a member and would be somebody who would have to fall within the bond of association. What 39 says is that if you're going to exercise your rights as a member through a trustee, you can't exercise them twice.

In other words, a trustee presumably will receive notices of meetings and will vote at those meetings as your representative. But essentially the member who is participating is the named beneficiary, who would have to fall within the bond of association. It's not a way of sort of allowing people, just by virtue of a trust arrangement, to join a credit union and not comply with the bond requirements.

**Mr Elston:** So the provision of operation of trusts in the credit unions means that if I, as a member, wanted to set up a trust for my grandchild—

**Mr Abols:** No, it says, "in the member's own name." It's in the member's own name. The member himself would be the named beneficiary here.

**Mr Elston:** The member himself. So you can't have a trust account operated for the beneficiary, who is outside the bond of the credit union.

**Mr Abols:** In that case you could, but then they would definitely fall within the 3% basket.

**Mr Elston:** But isn't that the case? I think what's happening or what might be suggested here is that if I am, for instance, holding an amount of money on deposit as the trustee, I've set up a settlement for a child somewhere other than in my own area, perhaps overseas, for education or for whatever, there could be, by virtue of inadvertence, a violation of the 3% because the object of the trust resides outside the country. Isn't that the problem they're getting at?

**Mr Abols:** I think they've identified a problem, but if you say inadvertence, that could be said of any section of the act, that they inadvertently don't comply with it. In that situation, if the named beneficiary does not fall within the bond of association, they could only be admitted, whether directly or through a trust, as the named beneficiary under the 3%. So indeed we would want the 3% rule to apply. The proposed change by the Ukrainians, which is to say that this is not going to be caught by the 3% rule, is the opposite of what we want.

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**Mr Elston:** So this effectively will restrict the operation of trust services by credit unions to a maximum of 3% membership of people outside their bond. You can have as many trust situations internally—I can operate for anyone inside. That's not going to be a problem, but I assume, for instance, if I operate as one of the originals of a broad trust or a group of individuals outside the bond, I could fill up the whole 3% and everybody else who is a member is thereby estopped from operating a trust account as a trustee, an account for a beneficiary outside the bond area. This is a more serious problem



perhaps than you may think, because it really restricts to 3% the operation of this trust activity, doesn't it?

**Mr Abols:** No, it doesn't. It restricts people who do not fall within the bond of association, whether they join in their own personal capacity without the intervention of a trust or whether they do so through a trust. The issue is not whether there's a trust involved; the issue is whether they fall within the bond of association. If they don't fall within the bond of association, then you admit them under the 3%, and if you're at the maximum in your 3%, then indeed they're out of it, they can't join. It really has nothing to do with the fact that they're either going to directly participate or that they're going to participate through a trustee who's been interposed. That has nothing to do with it. That really, I think, misses the point.

**Mr Elston:** I'm a little thick this morning, I think, but let me go back to the beginning. If there is a trust account operated by me as a member, the beneficiary of the trust actually has to be admitted before the trust account is acceptable for operation. It's not me who makes it acceptable; it's the beneficiary.

**Mr Abols:** That's right.

**Mr Elston:** If a person is beyond the 3% capping, if, for instance, there's now 3% and I apply to add my grandchild or my son, or whomever it might be, by way of a trust, or if, as executor, I operate a trust account for beneficiaries under the estate outside the bond of affiliation and thereby above the 3%, that trust account cannot be operated in the credit union as a result. In fact, I would have to take the estate work other places.

**Mr Abols:** Not necessarily, because when you look later on in the bill in terms of the fiduciary powers and services that they can provide—also we talked about taking deposits from certain prescribed persons and entities. It's not in the bill right now but it could be addressed in the regulation that we could make an exception for those sorts of situations.

On the face of the way you interpret this, the way this would operate on its face, yes, that's true.

**Mr Elston:** But you're saying there are going be ameliorative amendments or regulations which will allow regular operation of trust activity by executors or just by the benefactor?

**Mr Abols:** Trust accounts; that's right.

**Mr Elston:** People who are outside the area?

**Mr Abols:** That's right. A good example, and we mentioned this in the committee hearings, is lawyers' trust accounts. Lawyers will have trust accounts with credit unions. It doesn't mean to say that all their clients who deposit money with a lawyer or give the lawyer money, and then the lawyer, in turn, puts the money in his trust account, would have to be members of the credit union.

**Mr Elston:** I can accept that as a business exemption, but I just know how people might set up a settlement trust for the purposes of managing their own estates, perhaps even freezing estates for tax planning or whatever else the credit unions are going to be getting involved in and that 3% rule.

As long as you're telling me that there are going to be

other ways that a person can carry on normal trust activity without being limited to the number of beneficiaries they settle upon as a result of the 3% rule, I'm happy to pass it by. But as I was going through this presentation with the Ukrainian Credit Union, I thought it was wise to stop and shake that down in my own mind.

**Mr Abols:** Right.

**Mr Elston:** As long as I and they are given the clear indication that they will be able to do this, I'm happy.

**The Chair:** Further comments? Shall section 39 carry? All those in favour? Opposed? Carried.

Shall section 40 of the bill carry? All those in favour? Opposed? Carried.

Section 41 amendment, Mr Owens.

**Mr Owens:** I move that subsection 41(4) of the bill be struck out and the following substituted:

"Right to borrow

"(4) Subject to the bylaws, a member under the age of 18 years does not have the right to borrow any amount in excess of his or her deposits in the credit union unless,

"(a) a joint and several obligation is signed by the member and by a person 18 years of age or over; or

"(b) the loan is guaranteed by the government of Canada or a provincial or municipal government."

This is simply an enabling clause to allow individuals under the age of 18 to borrow beyond the funds in their own account.

**The Chair:** Any comments? Shall the amendment carry? All those in favour? Opposed? Carried.

A further amendment to section 41, Mr Owens.

**Mr Owens:** I move that subsection 41(5) of the bill be amended by inserting after "to" in the fourth line "or to the order of."

Subsection 41(5) has been amended to make it clear that a member may withdraw funds by cheque.

**The Chair:** Comments? Shall the amendment carry? All those in favour? Opposed? Carried.

Shall section 41 of the bill, as amended, carry? All those in favour? Opposed? Carried.

Section 42, Mr Owens.

**Mr Owens:** I move that subsection 42(2) of the bill be amended by striking out "board" in the third line and substituting "credit union."

By substituting the words "credit union" for "board," the section simply identifies the actual party with the obligation to pay.

**The Chair:** Comments? Shall the amendment carry? All those in favour? Opposed? Carried.

Shall section 42 of the bill, as amended, carry? All those in favour? Opposed? Carried.

Shall section 43 of the bill carry? All those in favour? Opposed? Carried.

Section 44, Mr Owens.

**Mr Owens:** I move that section 44 of the bill be struck out and the following substituted:

"Lien for liability

"44. A credit union has a lien on the deposits and membership shares of a member for any liability to it by the member, and may set off any sum standing to the credit of the member on the books of the credit union towards the payment of the liability."

**Mr Abols:** Essentially, it restores the credit union's right to a statutory lien on membership shares which they currently have under the act. The bill was originally drafted with a view that all capital, whether it's in the form of membership share, investment share, should be treated the same way as risk capital normally is in any other corporate organization, and you don't have, generally, a statutory lien against, for example, the shares in the TD Bank or the shares in National Trust. These entities may have a statutory lien on the deposits with that institution.

It was pointed out that membership shares, though, are also appropriately subject to a lien because if you're a member, and a member in good standing, you should be honouring your obligations to the credit union, and if you don't, that should be a source of funds for the credit union to draw on.

**The Chair:** Any comments? Shall section 44, as amended, carry? All those in favour? Opposed? Carried.

Section 45 of the bill, an amendment, Mr Owens.

**Mr Owens:** I move that section 45 of the bill be amended by adding the following subsection:

"Repeal

"(5) If the Unclaimed Intangible Property Act is in force on the day this section comes into force, this section is repealed on that day; otherwise this section is repealed on the day the Unclaimed Intangible Property Act comes into force."

This motion ensures that the Unclaimed Intangible Property Act will govern the custody of unclaimed credits once it's proclaimed. It's essentially a way of dealing with unclaimed deposits and ensuring that the Treasurer or the Minister of Finance is a recipient of those said unclaimed credits.

**The Chair:** Comments? Shall the amendment carry? All those in favour? Opposed? Carried.

Shall section 45 of the bill, as amended, carry?

All those in favour? Opposed? Carried.

Shall section 46 of the bill carry? All those in favour? Opposed? Carried.

Shall section 47 of the bill carry? All those in favour? Opposed? Carried.

Shall section 48 of the bill carry? All those in favour? Opposed? Carried.

Shall section 49 of the bill carry? All those in favour? Opposed? Carried.

Shall section 50 of the bill carry? All those in favour? Opposed? Carried.

Section 51 of the bill, an amendment, Mr Owens.

**Mr Owens:** I move that section 51 of the bill be amended by adding the following subsection:

"Transition

"(1.1) The articles of every credit union in existence

on the day before this subsection comes into force shall be deemed to provide for a class of shares known as membership shares."

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This is an issue that was raised, again, by the credit union and caisse populaire movement, and what it simply does is that it deems that each and every credit union, on the day before the subsection coming into force, will have a class of shares known as membership shares if they are currently absent from their articles of incorporation.

**The Chair:** Any comments? Shall the amendment carry? All those in favour? Opposed? Carried.

Amendment to section 51, Mr Owens.

**Mr Owens:** I move that section 51 of the bill be amended by adding the following subsections:

"Insurability

"(10) A share held as a condition of membership in a credit union that the board has not converted to another class of share is not insured until it is deemed to be a deposit.

"Not insurable

"(11) Shares are not insurable by the corporation."

I'll ask Mr Abols or Mr Glower to explain that.

**Mr Abols:** This essentially establishes the principle that all share capital in a corporation, whether it takes the form of investment shares held by members or non-members or membership shares themselves, are risk capital, and therefore the role of the deposit insurer should be the traditional role a deposit insurer has vis-à-vis all financial institutions; that is, to insure deposits, not to insure the equity you have in the credit union.

This also sort of deals with the transitional issue, because the way we've structured 51 there are some shares that credit unions have out there which aren't strictly a condition of membership and the credit unions have been given an option either to preserve these shares as a form of capital but convert them into another class of share, or otherwise have them deemed as deposits. That doesn't kick in for a year. There's a provision which says that for one year that transitional provision doesn't kick in, so the issue is, well, what's the status of these other shares in the meantime? Are they deposits or are they just shares and are they insured or not insured? The decision here reflects the view that they are shares until they become deposits and they are not insured.

**The Chair:** Any comments? Shall the amendment carry? All those in favour? Opposed? Carried.

Shall section 51 of the bill, as amended, carry? All those in favour? Opposed? Carried.

Section 52, amendment, Mr Owens.

**Mr Owens:** I move that subsection 52(5) of the bill be amended by striking out "articles" in the first line and substituting "bylaws."

This simply allows credit unions to determine within their bylaws whether a membership share certificate needs to be provided to the member.

**The Chair:** Any comments? Shall the amendment



carry? All those in favour? Opposed? Carried.

Shall section 52, as amended, carry? All those in favour? Opposed? Carried.

Shall section 53 carry? All those in favour? Opposed? Carried.

Shall section 54 carry? All those in favour? Opposed? Carried.

Section 55 of the bill, amendment, Mr Owens.

**Mr Owens:** I move that section 55 of the bill be amended by adding the following subsection:

"Same

"(2) For the purposes of subsection (1), any reference in part VIII of the Business Corporations Act to 'offering corporation' shall be deemed to be a reference to the 'credit union' and if the credit union is not an 'offering corporation' as defined in section 1 of that act, any reference in part VIII of that act to the 'commission' shall be deemed to be a reference to the 'director.'"

I'll ask Mr Abols to translate that.

**Mr Abols:** I can simply say it's a change to ensure that the terminology we incorporate by incorporating parts of the Business Corporations Act fit the credit unions act. The reference to offering corporation means a corporation that has offered securities by way of a prospectus. If that's the case, then credit unions will be offered that option under the bill and they will be deemed to be offering corporations under the Business Corporations Act and then the necessary reporting requirement there will be to the securities commission as opposed to the director. If they're not an offering corporation, that is, they've either never issued securities to the general public or to their members other than membership shares or have issued them by way of an offering statement under our act, then they remain subject to the director's regulatory oversight. So it's a change in terminology just to rationalize the terminology that results by incorporating a section from another statute.

**Mr Kwinter:** Is the Business Corporations Act going to be similarly modified to include this?

**Mr Abols:** No, what this does is that part VIII of the Business Corporations Act deals with proxies and information circulars that have to be submitted with proxies. They have regulations detailing in significant detail what you have to have and what you don't have to have, and rather than simply reproducing all of that in our bill, we thought the simple way would be to incorporate what they have by reference. So there's no need to amend their act, because we're simply drawing these provisions from their act into our act. So this amendment says, when you read it for purposes of our act, "These are what these terms mean."

**The Chair:** Any comments? Shall the amendment carry? All those in favour? Opposed? Carried.

Shall section 55, as amended, carry? All those in favour? Opposed? Carried.

Shall section 56 carry? All those in favour? Opposed? Carried.

Shall section 57 carry? All those in favour? Opposed? Carried.

Shall section 58 carry? All those in favour? Opposed? Carried.

Section 59, an amendment, Mr Owens.

**Mr Owens:** I move that section 59 of the bill be amended by adding the following subsection:

"Same

"(3) No person described in clauses 76(a) or (b) shall charge or accept payment of a commission on the purchase or sale of a security of a credit union."

It's simply a prohibition, that directors, officers or employees of a credit union or a league cannot receive any kind of benefit or commission in the form of shares or membership as a result of the sale of securities by the same.

**The Chair:** Any comments? Shall the amendment carry? All those in favour? Opposed? Carried.

Shall section 59 of the bill, as amended, carry? All those in favour? Opposed? Carried.

Shall section 60 of the bill carry? All those in favour? Opposed? Carried.

Section 61 of the bill, amendment, Mr Owens.

**Mr Owens:** I move that section 61 of the bill be amended by adding the following subsection:

"Exception

"(5) Section 28 of the Business Corporations Act does not apply to prevent a subsidiary of a credit union from holding membership shares in a credit union that is its holding body corporate."

Essentially, section 28 is a prohibition against a subsidiary having any equity in its parent. What we envision under the credit unions act is that credit unions will be able to own subsidiaries and they should be able to have some say in the running of the credit union as a member of that organization. In order to become a member of the credit union, they have to hold membership shares. This prevents them from running afoul of the Business Corporations Act, because these subsidiaries will be governed by the Business Corporations Act.

**The Chair:** Any comments? Shall the amendment carry? All those in favour? Opposed? Carried.

Shall section 61 of the bill, as amended, carry? All those in favour? Opposed? Carried.

With the indulgence of committee members, if there are no comments on sections 62 to 77, inclusive, I would like to move them concurrently. Are there any comments? Is there agreement? Agreed.

**Mr Kimble Sutherland (Oxford):** Our ever-efficient Chair is becoming even more efficient.

**The Chair:** Shall sections 62 to 77, inclusive, carry? All those in favour? Opposed? Carried. Thank you ever so much.

Section 78, Mr Owens.

**Mr Owens:** I move that the French version of paragraph 2 of subsection 78 of the bill be amended by striking out "surveillance" in the first line and substituting "supervision."

Again, this is in terms of cleaning up language with respect to translation.

**The Chair:** Any comments? Shall the amendment carry? All those in favour? Opposed? Carried.

Shall section 78, as amended, carry? All those in favour? Opposed? Carried.

Shall section 79 of the bill carry? All those in favour? Opposed? Carried.

Shall section 80 of the bill carry? All those in favour? Opposed? Carried.

Shall section 81 of the bill carry? All those in favour? Opposed? Carried.

Section 82, Mr Owens.

**Mr Owens:** I move that the French version of paragraph 2 of subsection 82(5) of the bill be amended by striking out "l'état ou" in the last line and substituting "la note ou."

Again, this is a correction of terminology in the French version.

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**The Chair:** Any comments? Shall the amendment carry? All those in favour? Opposed? Carried.

Shall section 82 of the bill, as amended, carry? All those in favour? Opposed? Carried.

Section 83 has an amendment. Mr Owens.

**Mr Owens:** I move that subsection 83(1) of the bill be amended by striking out "section 75" in the first and second lines and substituting "clause 75(1)(a)."

**Mr Abols:** This is simply to restrict the application of the rules governing transfers of securities to those securities that have been issued pursuant to an offering statement. Securities issued pursuant to a prospectus would of course be governed by the rules under the Securities Act.

**The Chair:** Any comments? Shall the amendment carry? All those in favour? Opposed? Carried.

Shall section 83 of the bill, as amended, carry? All those in favour? Opposed? Carried.

Section 84 has a Liberal amendment. Mr Kwinter.

**Mr Kwinter:** I move that section 84 of the bill be amended by adding the following subsection:

"When prohibited from carrying on business

"(3) A credit union that is not maintaining the required adequate capital shall not carry on business except under the supervision of a stabilization authority or the administration of the corporation."

The reason for that addition to this particular section is that I'm sure you know that, historically, there are those credit unions which did not maintain the required amount of capital and as a result have fallen into problems where stabilization funds have been put into effect. It is our feeling that when there is a problem there should be a provision that when the stabilization fund literally comes to the rescue of the credit union, there should be some supervision to make sure that the problems that got the credit union into the position where it required stabilization funds should in fact be under some sort of supervision, to make sure that the problem isn't just compounded and that you're really throwing good money after bad. That is the basic premise behind this amendment.

**Mr Abols:** We recognize this amendment as one that was advanced by the deposit insurer, because the deposit insurer, as you know, under the bill would have the principal role for stabilization, at least initially until other leads or credit unions take over. I think the amendment, though, emerges from something of a misreading of the act, because as we understood the deposit insurer's concern, it was initially that the variation provisions that are in the bill which allow credit unions to operate notwithstanding that they don't meet capital, seemed like an automatic right to a variation. We have introduced amendments which make that clearly a discretionary right.

Secondly, there are situations where a credit union will be operating without adequate capital, but the act again envisions a mechanism whereby, for example, in terms of administration, that process is totally within the control of the deposit insurer. If the deposit insurer feels that having a particular credit union offside the capital requirements poses a real, fundamental danger to their members or depositors, it can on its own initiative issue an administration order and take over the credit union.

Similarly on supervision, the deposit insurer, also as a stabilization authority, can apply to the director, and whenever the application comes from a stabilization authority—that is, the stabilization authority says, "I want this credit union under my supervision"—the director has no discretion but to put them under supervision.

The view is that the result that this is designed to achieve is achieved in the act but in a different way, and this is much too restrictive in that there may be situations where—and maybe Mr Glower can speak to this—you may have credit unions operating offside but they don't warrant being placed under administration and the level of supervision is not also necessary, at least to the extent of having them come under a supervision order.

But this concern about credit unions offside and operating without any kind of regulatory constraints is not the case. The bill is designed in such a way that there several trigger points, and the deposit insurer has control of some of these trigger points and so at any point in the process can bring to bear the necessary regulatory oversight that's required.

**Mr Glower:** I would just add that I think, in addition to what Imants said, there is an operational problem with this type of amendment to the extent that there are a lot of credit unions which have engaged in mergers with other credit unions, and the credit union which was on side may go offside by taking over a weaker unit. This type of motion could discourage that type of activity from taking place because they would then not be able to carry on business unless they went under supervision or administration.

A credit union may look to itself and say: "Well, I'm on side today. I don't have to do anything with OSDIC; they're happy with my operations. But if I try and help out a weaker unit, which may put me below certain requirements, I automatically default under OSDIC's administration." That's just not operationally feasible for credit unions, nor would it necessarily be for the good of the movement if they really wanted to just be there to



help out. So as Imants explained, there are other operational ways of achieving this for those areas and for those credit unions which should be under supervision or administration, but we don't want to prevent other things from occurring.

**Mr Kwinter:** I don't think that being under a stabilization or administration precludes one credit union from taking over a weaker credit union. They have to get permission to do that in any case, and that would be the kind of thing that either the stabilization fund or the corporation could determine.

I just feel that when you have this problem, there should be a provision in the act to put greater teeth in the fact that if you are in a capital shortfall, then there is the right for either the stabilization fund or the director to take a hand in the operation of that credit union.

**Mr David Johnson:** I'm going to ask a question here. I probably should know the answer, but are the requirements for the very small credit unions for capital the same as for the large credit unions, or is there some variance?

**Mr Abols:** Today they're the same. But there is a process, the capital advisory committee, which is an ad hoc committee set under the aegis of the deposit insurer with participation of the credit union movement, which reviews the capital situation of credit unions on a case-by-case basis, and they may be in effect granted—I won't say "a variation," because there's no mechanism under the current act for that—but a certain grace period in which to come up to the prescribed minimum capital requirements.

There are a lot of credit unions that are offside the capital requirements today, but there's a schedule of compliance that they are required to follow and a graduated approach to achieving compliance.

**Mr David Johnson:** Would a higher proportion of those which are offside be smaller credit unions?

**Mr Abols:** Maybe Harvey can answer that question.

**Mr Glower:** I'm just double-checking, but the answer should be no. In fact, it is the smaller credit unions which today hold a higher level of surplus in capital than the larger ones. Units ranging from \$500,000 to about \$2 million hold surplus in capital between 4.87% and 6.83%, whereas the larger units are hovering around 3.7%.

**Mr David Johnson:** I'm just dredging back into my memory and I thought I recalled—and I must be incorrect in this—that when the small credit unions—and I have their deputation here and I can't find any comments on it, so perhaps I'm wrong—but I thought that they had indicated, because of the nature of the small credit unions and because they know the people whom they're lending to, they work with them or share some common bond, perhaps the capital requirements for them wouldn't need to be quite as strict. Traditionally, because of their closeness, they've been able to operate in a somewhat different fashion than maybe the larger credit unions.

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**Mr Glower:** What's going to happen under the proposed BIS, the Bank for International Settlements, rules which we'll be adopting as the model for credit unions,

the statistics we did when we ran our own testing was that for units under \$5 million in assets, which I guess one could consider to be small units, the majority of the credit unions that today may not be complying with the requirements will in fact comply under the new requirements, because the nature of their assets would be towards a lower-risk weighting whereas today everything is risk-weighted, if you will, at 100%. In other words, they have to have 5%, and everything is therefore risk-weighted at 100%. So in fact they will benefit under the new system, and while the requirements are the same, the calculation results in a net reduced effect. So it's easier for them to comply.

**Mr David Johnson:** What I was trying to assess in my mind would be the impact of this amendment on them if they were offside. It says that they "shall not carry on business except under the supervision of a stabilization authority" etc. I have this impression that some of the organizations that did make a presentation to us felt that some of the requirements were perhaps too stiff already, although, as you pointed out, more will be on side, I guess—

**Mr Glower:** Yes, that's right.

**Mr David Johnson:** —and that this may cause some concern to them. But I don't know if anybody's talked to the small credit unions about this sort of amendment.

**Mr Glower:** I think, as Mr Abols pointed out, there are certainly other mechanisms. My recollection was around section 284, which basically said if a credit union is not meeting capital, it could come under supervision—that would be one way it could come under supervision—if the director initiated or if OSDIC initiated, but certainly they don't have to.

**Mr Jim Wiseman (Durham West):** Currently, the federal Liberals are undergoing a review of the banking policy and they have a committee out looking at the Bank Act. The Canadian banks are covered under the Bank for International Settlements agreement. American banks are not. The American banks have not signed on to that.

I'm just curious that if we were to go to a North American banking market, would we have to come back and address this section again to change it? If we were to drop out of the Bank for International Settlements agreements, as the Americans have, we would have to change this section again, wouldn't we?

**Mr Glower:** No, I don't think we'd have to change the section, because section 84 requires credit unions and caisses populaires to have adequate levels of capital and liquidity, and then the rules prescribing the measurement of capital would be under the regulations. So to the extent that BIS was no longer the flavour of the week, if you will, then we could easily migrate to a different system through regulations so long as we govern that to be the adequate level of capital. So the statute itself would not have to be changed.

**Mr Wiseman:** So then what the feds do with the banks, the Bank Act and everything, we're going to just tag along with that in this section.

**Mr Glower:** Our view is that the BIS, from a credit union's point of view, is a much better measurement

because it really reflects the nature of their business and the risks in which they are engaging. I think the credit union movement in fact supports the BIS as a measurement for themselves.

**Mr Wiseman:** Small businessmen don't.

**The Chair:** Further discussion on the Liberal amendment? Seeing none, all those in favour of the amendment? All those opposed? The amendment is lost.

Shall section 84 of the bill carry? All those in favour? All those opposed? Carried.

Shall section 85 of the bill carry? All those in favour? All those opposed? Carried.

Section 86 has an amendment.

**Mr Owens:** I move that subsection 86(3) of the bill be amended by striking out "The director shall grant the variation" at the beginning and substituting "The director may grant the variation subject to any terms he or she considers appropriate."

It does two things. It simply indicates that a director's powers are discretionary and that he or she may impose terms and conditions with respect to granting a variation.

**The Chair:** Comments? Shall the amendment carry? All those in favour? Opposed? Carried.

Shall section 86 of the bill, as amended, carry? All those in favour? Opposed? Carried.

Section 87 has an amendment. Mr Owens.

**Mr Owens:** I move that subsection 87(2) of the bill be struck and the following substituted:

"No automatic stay on appeal

"(2) An appeal of the superintendent's decision does not stay the operation of the decision."

This is to ensure continuity with respect to the previous section, that once an order is granted, and I think Mr Abols explained it quite nicely, in terms of the necessity to set down an order, all efforts have been made to come to a voluntary settlement through moral suasion, and that when it gets to the point of the superintendent setting down an order, the situation is far too serious to let the credit union or caisse populaire go about its normal business activities.

**The Chair:** Any comments? Shall the amendment carry? All those in favour? Opposed? Carried.

Shall section 87 of the bill, as amended, carry? All those in favour? Opposed? Carried.

With the committee's indulgence and if there's no discussion, shall sections 88 to 91, inclusive, carry? All those in favour? Opposed? Carried.

Section 92 has amendments. Mr Owens.

**Mr Owens:** I move that subsection 92(2) of the bill be struck out and the following substituted:

"Exception

"(2) Despite paragraph 7 of subsection (1), an individual is not disqualified from becoming a director solely because,

"(a) he or she provides, without remuneration, services to the credit union that are ordinarily provided by an employee; or

"(b) he or she is the parent or child of an employee of the credit union and the employee is not an officer of the credit union.

"Transition

"(2.1) Paragraph 7 of subsection (1) comes into force on a day that is one year after the day subsection (1) comes into force."

**The Chair:** Mr Owens, if I could just interject: According to my agenda, we should be dealing with subsection 92(1), paragraph 7, at this point, and then paragraph 11.

**Mr Owens:** Sorry, my binder's out of order here.

**The Chair:** If we could just get back to that order.

**Mr Owens:** Or we could pass that first one.

**The Chair:** We could have, but—

**Mr Owens:** But we won't. Okay.

I move that paragraph 7 of subsection 92(1) of the bill be amended by inserting after "league" in the second line "in which the credit union is a member."

This amendment ensures that the disqualifications in paragraph 7, which were almost discussed earlier, would not prohibit an employee of a league from becoming a director of a credit union that was not a member of that person's league.

**The Chair:** Discussion? Seeing none, all those in favour of the amendment? Opposed? Carried.

Subsection 92(1), paragraph 11. Mr Owens.

**Mr Owens:** I move that the French version of paragraph 11 of subsection 92(1) of the bill be amended by striking out "n'ont pas terminé" in the first line and substituting "ne terminent pas."

It's a clarification with respect to French translation.

**The Chair:** Any comments? Shall the amendment carry? All those in favour? Opposed? Carried.

Now, Mr Owens, the amendment to subsection 92(2).

**Mr Owens:** Right, and as I've already read the section into the record, if it is the pleasure of the Chair, I'll ask Mr Abols to give that explanation.

**The Chair:** If there are no objections raised from the committee members, we'll do that.

**Mr Abols:** This amendment simply tempers the scope or the harshness of the prohibition or disqualification against parents or children of employees becoming directors of credit unions. It was pointed out by the credit union movement that this was really impractical in many smaller credit unions, so the amendment provides that if the employee is not an officer of the credit union, the parent or child may become a director, may run as a director.

The transitional provision just ensures that credit unions that are offside have a year in which to come on side, either by allowing the term of office to run its course, if it's going to end in that year, or to hold another election. This would accommodate smaller credit unions.

1150

**Mr David Johnson:** Most terms of office would be for a year, would they?



**Mr Abols:** I understand they are generally for three.

**Mr David Johnson:** Three? Then had you considered the transition period being when the term of office expired, as opposed to one year?

**Mr Abols:** The view is that you potentially could have this provision not kicking in for three years in the case of a director who's just been recently elected.

**Mr David Johnson:** On average it would be a year and a half. Some might come due the next day, some might be three years and probably the average would be around a year and a half.

**Mr Abols:** Picking numbers is a generally arbitrary choice, and one year was felt to be appropriate. It's the approach we take in terms of grandfathering most provisions. Maybe Harvey could speak to the experience out there. Would it make much of a difference if it was a year and a half or a year?

**Mr Glower:** The terms of office are generally straddled anyway, so it shouldn't be such that this provision would knock an entire board out of place, or in fact that there wouldn't still be a majority of members on the board by virtue of the turnover. So it should not be problematic.

**Mr David Johnson:** So if there were an individual who was in violation, a year and a day after, what would be the penalty? They'd be in violation of the act.

**Mr Glower:** They'd technically be in violation of the statute. I'm trying to recall—Imants, help me out—if there is an offence provision for being disqualified from sitting on the board. Actually, one of the provisions of that is that if they violated a disqualification from sitting on a board, they can in fact be disqualified from sitting on a credit union's board forever, because that would then be a violation of the credit union act. Section 92 lists a number of reasons one would be disqualified from sitting on the board of a credit union, and one of them would be a violation of the credit union act. So it could be severe.

**Mr Abols:** The other point I would mention is that in section 98, as soon as the person is offside the qualification requirements, they cease being a director. They may be sitting around the table, they're there, but they're not there in the capacity of a director any longer. Automatically, they would be deemed not to be eligible to be a director, or to function as a director.

**Mr David Johnson:** That deeming doesn't take place in this clause.

**Mr Abols:** No, it's in clause 98(1)(c).

**The Chair:** Further discussion? Shall the amendment carry? All in favour? Opposed? Carried.

There's an amendment to clause 92(3)(c).

**Mr Owens:** I move that clause 92(3)(c) of the bill be amended by striking out "this act" in the second line and substituting "this act, a predecessor of this act."

This is simply to capture those that may have been in violation of the legislation in the past, in order to ensure that they are not able to become directors at the point that this bill becomes law.

**The Chair:** Any comment? Shall the amendment

carry? All in favour? Opposed? Carried.

Shall section 92, as amended, carry? All those in favour? Opposed? Carried.

Shall section 93 of the bill carry? All those in favour? Opposed? Carried.

Section 94 has some amendments.

**Mr Owens:** I move that subsection 94(2) of the bill be struck out and the following substituted:

"Election in rotation

"(2) The bylaws may provide for the election and retirement of directors in rotation."

It's our view that this section, with respect to the deletion with respect to the terms of office, is unnecessary in that we are in this section also providing for the credit union's bylaws to determine the terms of office of the directors.

**The Chair:** Any comments? Shall the amendment carry? All those in favour? Opposed? Carried.

There's an amendment to subsection 94(3).

**Mr Owens:** I move that the French version of subsection 94(3) of the bill be amended by striking out "a un nombre de voix égal à celui des administrateurs" in the second and third lines and substituting "doit voter pour le nombre d'administrateurs."

Again, a clarification with respect to the French translation, and I say that with great respect to the francophone community. I apologize in advance for the rest of this clause-by-clause. If there's somebody else who can do this, they're welcome to come here and provide the entertainment.

**The Chair:** Any comments? Shall the amendment carry? All those in favour? Opposed? Carried.

Shall section 94, as amended, carry? All those in favour? Opposed? Carried.

If there's no objection, shall sections 95 to 99, inclusive, carry? All those in favour? Opposed? Carried.

Section 100 of the bill has an amendment.

**Mr Owens:** I move that subsection 100(4) of the bill be struck out and the following substituted:

"Right to make representations

"(4) At the meeting, the director is entitled to make representations about the resolution for his or her removal."

This is a deletion of superfluous language that goes "as a director thinks fit."

**The Chair:** Comments? Shall the amendment carry? All those in favour? Opposed? Carried.

Shall section 100 of the bill, as amended, carry? All those in favour? Opposed? Carried.

Section 101 of the bill.

**Mr Owens:** I move that subsection 101(2) of the bill be amended by striking out "fifteen" in the sixth line and substituting "twenty."

What this section addresses is that it extends the period of five days that the credit union has to comply with a director's request for information.

**The Chair:** Any comments? Shall the amendment

carry? All those in favour? Opposed? Carried.

Shall section 101 of the bill, as amended, carry? All those in favour? Opposed? Carried.

Section 102 has an amendment.

**Mr Owens:** I move that section 102 of the bill be amended by adding the following subsection:

"Same

"(2.1) In addition to a delivery permitted under section 334, a notice under this section may be delivered by publishing the notice in a newspaper that circulates in the community in which the head office of the credit union is located."

This is simply for cost-efficiency, particularly for large credit units, in terms of the provision of notices as required.

**The Chair:** Any comments? Shall the amendment carry? All those in favour? Opposed? Carried.

Shall section 102 of the bill, as amended, carry? All those in favour? Opposed? Carried.

Section 103 has an amendment.

**Mr Owens:** I move that subsection 103(4) of the bill be amended by inserting after "statement" in the second line "under subsection (3)."

This is simply a technical amendment to clarify that the statement that a credit union must circulate is a statement provided by a director when resigning because of a disagreement with other directors.

**The Chair:** Any comments? Shall the amendment carry? All those in favour? Opposed? Carried.

Another amendment to section 103, Mr Owens.

**Mr Owens:** I move that section 103 of the bill be amended by adding the following subsection:

"Same

"(4.1) In addition to a delivery permitted under section 334, a notice under this section may be delivered by publishing the notice in a newspaper that circulates in the community in which the head office of the credit union is located."

That's for reasons similar to the former section we passed.

**The Chair:** Are there any comments? Shall the amendment carry? All in favour? Opposed? Carried.

Shall section 103 of the bill, as amended, carry? All those in favour? Opposed? Carried.

If there are no objections, shall sections 104 to 108, inclusive, carry? All those in favour? Opposed? Carried.

**Mr Sutherland:** May I suggest that we stop at this time? I believe the debate is just about wrapping up and we've got through a good chunk.

**The Chair:** Indeed my watch shows 12 o'clock. We will recess until immediately following routine proceedings this afternoon.

*The committee recessed from 1200 to 1554.*

**The Chair:** We continue this afternoon with our clause-by-clause of Bill 134. We are, at this point, at section 109, and we have an amendment.

**Mr Owens:** I move that subsection 109(1) of the bill

be amended by adding at the end "or another subcommittee of the board."

The reason for this amendment is that it accomplishes two things: It allows boards to set up other committees along with the executive committee but also limits the scope and responsibilities that can be delegated to them. I think Mr Abols would like to say something.

**Mr Abols:** The motion has been changed and slightly redrafted. You've read an earlier version of it. This is the more current version, but it has the same effect.

**The Chair:** If you would, please, Mr Owens, read the motion as it's supposed to be and as the members of the committee have it before them.

**Mr Owens:** I move that subsection 109(1) of the bill be struck out and the following substituted:

"Executive committee

"109(1) The members of a credit union may, by special resolution, authorize the board to delegate any of its powers to an executive power or another subcommittee of the board."

My explanation, if it pleases the committee, remains the same with respect to delegation of authority but with limitations.

**The Chair:** Any comments? Shall the amendment carry? All in favour? Opposed? Carried.

Another amendment to section 109.

**Mr Owens:** I move that subsection 190(2) of the bill be amended by striking out the portion before paragraph 1 and substituting the following:

"Exception

"(2) Despite subsection (1), the following powers cannot be delegated to the executive committee or another subcommittee of the board:"

The amendments to this section will again enable the board to establish other committees besides the executive committee but with the limitation on power and scope of responsibilities. It's also found in other legislation governing financial institutions.

**The Chair:** Any comments? Shall the amendment carry? All those in favour? Opposed? Carried.

Shall section 109, as amended, carry? All those in favour? Opposed? Carried.

Section 110 has an amendment.

**Mr Owens:** I move that subsection 110(1) of the bill be struck out and the following substituted:

"Credit committee

"110(1) Except as made unnecessary by a bylaw referred to in subsection 123(4), a credit union shall establish a credit committee."

This is an amendment that clarifies that a credit committee is mandatory except when a loan officer has been appointed.

**Mr Kwinter:** I would like to get a further clarification from the parliamentary assistant or from legal counsel. In the original bill, it says a credit union "may" establish a credit committee and in the amendment it says it "shall" establish a credit committee. Is that intended, and could you explain the reason it has been made



mandatory as opposed to permissive?

**Mr Abols:** In the current act, it is essentially mandatory except where a loans officer has been appointed, and we wanted to carry that forward. It was an inadvertent change when the bill was first tabled which allowed it to be discretionary. There has to be some kind of mechanism, some group or some person, responsible for reviewing the loan applications, and the way the bill is currently drafted you could conceivably have no one appointed, neither a loan officer nor a credit committee, and that wasn't the intention.

**Mr Kwinter:** So it's correcting an inadvertent wording of that particular section.

**Mr Abols:** That's correct.

**The Chair:** Any further comment? Shall the amendment carry? All those in favour? Opposed? Carried.

Shall section 110 of the bill, as amended, carry? All in favour? Opposed? Carried.

Section 111 has an amendment.

**Mr Owens:** I move that the English version of subsection 111(3) of the bill be amended by striking out "president" in the third line and substituting "chair."

This is a consequential amendment that arises from an amendment that will be placed later to subsection 141(1), where the term "president" has been replaced with the term "chair." This change reflects the terminology that is used currently by a credit union to designate its chief executive officer.

**The Chair:** Any comments? Shall the amendment carry? All those in favour? Opposed? Carried.

Shall section 111 of the bill, as amended, carry? All those in favour? Opposed? Carried.

Section 112 has an amendment.

1600

**Mr Owens:** I move that the French version of subsection 112(3) of the bill be amended by striking out—if there's somebody on ministry staff, Harvey, who has a better grasp of the French language, please, if that's in order.

**Mr Abols:** I don't think Harvey has it, Mr Owens.

**Mr Owens:** Okay. I move that the French version of subsection 112(3) of the bill be amended by striking out "a un nombre de voix égal à celui des membres" in the third and fourth lines and substituting "doit voter pour le nombre de membres."

This is a cleaning up of the French-language translation. You wouldn't know it by the way I speak, but it is a clarification.

**The Chair:** Any comments on the amendment? Shall the amendment carry? All those in favour? Opposed? Carried.

Shall section 112 of the bill, as amended, carry? All those in favour? Opposed? Carried.

Shall section 113 of the bill carry? All those in favour? Opposed? Carried.

Section 114 has an amendment.

**Mr Owens:** I move that the English version of section 114 of the bill be amended by striking out "president" in

the second line and substituting "chair."

Again this is consistent with the explanation with respect to the amendment that will follow in 141(1) that this is current terminology within the credit union movement. It means the chief executive officer.

**The Chair:** Any comments on the amendment? Seeing none, shall the amendment carry? All those in favour? Opposed? Carried.

Shall section 114 of the bill, as amended, carry? All those in favour? Opposed? Carried.

If there are no objections, shall sections 115 to 117, inclusive, carry? All those in favour? Opposed? Carried. There's an amendment to section 118.

**Mr Owens:** I move that subsection 118(4) of the bill be struck out and the following substituted:

"Right to make representations

"(4) At the meeting, the committee member is entitled to make representations about the resolution for his or her removal."

This is again a cleaning up of the language and removing superfluous language.

**The Chair:** Any comments? Shall the amendment carry? All those in favour? Opposed? Carried.

Shall section 118 of the bill, as amended, carry? All those in favour? Opposed? Carried.

Shall section 119 of the bill carry? All those in favour? Opposed? Carried.

We have come to section 120 of the bill. Would Mr Owens like to make any comments?

**Mr Owens:** If I could take 60 seconds with counsel, I would appreciate it.

I move that section 120 be struck.

**Clerk of the Committee (Ms Lynn Mellor):** No, no. It's "Shall section 120 carry as part of the bill?" and they either just vote against it or vote for it.

**The Chair:** The Chair will call the question on section 120. Shall section 120 of the bill—

**Mr David Johnson:** Mr Chair, can I ask a question on it first? Could you tell us what you're voting against? Is it the fact that the director who would be attending the credit committee would not have the right to vote? Presumably it's that, is it?

**Mr Abols:** The concern raised by representatives of the credit union movement was that by having a director there present at a credit committee, which is ostensibly a body independent of the board of directors, it would in some way inhibit them from making impartial decisions. So there was a fear of undue influence by senior management if they were allowed to attend meetings of the credit committee.

**Mr David Johnson:** Then it's actually the first part of 120, that the director may attend.

**Mr Abols:** Well, it's the first part or the second part. If you don't have the first part, you don't need the second part.

**Mr David Johnson:** The second part is redundant.

**Mr Kwinter:** Mr Chair, on a point of order: This is

quite bizarre. This is a government bill. You would think that if you wanted to remove a section you would introduce an amendment that this section be deleted. I don't understand why I hear that we're going to vote against this section. This isn't a bill that's being brought forward by a private member or the opposition and you're voting against it. This is your bill. If there's a section in here that you don't like, you should bring forward an amendment saying, "We're going to delete it."

**Interjection:** You can't.

**Mr Kwinter:** Sure you can. You've been doing it all along.

**The Chair:** The clerk has advised me that what you've suggested, Mr Kwinter, would be out of order. To delete a subsection is in order, but to strike out a full section by a motion is out of order. I always take the best advice of the clerk, as most Chairs do.

**Mr Owens:** But I do agree that it's bizarre.

**Mr Kwinter:** As long as you agree that it's bizarre.

**The Chair:** The Chair does apologize. By all means, we should have had an opportunity for members of the committee to speak to the section of the bill before we moved a decision on it.

Shall section 120 of the bill carry? All those in favour? All those opposed? Section 120 of the bill is lost.

**Mr Kwinter:** Mr Chair, on another point of order: Does that mean that every section from here on will be renumbered?

**The Chair:** Yes, that will require that there be a renumbering of the sections.

**Mrs Haslam:** But only when it's printed, not now.

**The Chair:** Yes, we will continue through the bill as it stands now and when it's reprinted there will be a renumbering of the sections.

**Mr Owens:** We'll try not to hide anything from you, Monte.

**The Chair:** Shall sections 121 to 126, inclusive, carry? All those in favour? Opposed? Carried.

There is an amendment to section 127.

**Mr Owens:** I move that subsection 127(3) of the bill be struck out and the following substituted:

"Ineligible officials

"(3) An officer or employee of the credit union or of a subsidiary of the credit union who is involved in the day-to-day operations of the credit union or subsidiary is not eligible to be a committee member."

What this effectively does is temper the language with respect to the broad prohibition which is currently found in subsection 123 against officers and employees of the credit union or its subsidiaries from becoming members of the audit committee. This will only exclude the officers and employees who are involved in the day-to-day operations of the credit union or its subsidiaries.

**The Chair:** Any comments? Shall the amendment carry? All in favour? Opposed? Carried.

Shall section 127 of the bill, as amended, carry? All those in favour? All those opposed? Carried.

Section 128 has an amendment.

**Mr Owens:** I move that the French version of subsection 128(3) of the bill be amended by striking out "a un nombre de voix égal à celui des membres" in the third and fourth lines and substituting "doit voter pour le nombre de membres."

Again it's a cleaning up of the French-language translation.

**The Chair:** Any comment? Shall the amendment carry? All those in favour? All those opposed? Carried.

Shall section 120 of the bill, as amended, carry? All those in favour? All those opposed? Carried.

Shall sections 129 through 133, inclusive, carry? All those in favour? Opposed? Carried.

1610

There is an amendment to section 134.

**Mr Owens:** I move that subsection 134(2) of the bill be struck out and the following substituted:

"Same

"(2) The auditor, a member of the audit committee or a director may call a meeting of the audit committee at any time."

What we're doing is simply requiring and giving the credit union's auditor, an individual member of the audit committee or the director the ability to convene a meeting of the audit committee. The provision will ensure that any problems within the credit union are quickly brought to the audit committee's attention.

**Mr Kwinter:** I have a bit of a problem with this amendment. I don't have a problem with the intent of the amendment, I just feel that the amendment as proposed really has nothing to do with the section it replaces. When you take a look at subsection 134(2), it says, "At its meetings, the committee shall examine the affairs of the credit union." It gives a direction to the audit committee that it should examine the affairs of the credit union. It doesn't say, "You've got to meet because it's a pro forma requirement, so let's have a cup of coffee and we've met; let the minutes show it," and away you go.

You're saying that "[t]he auditor, a member of the audit committee or a director may call a meeting of the audit committee at any time, which I have no problem with, but I think the direction about what that audit committee should be doing should stay in there. Let them call it at any time to examine the affairs of the credit union. I don't understand why one has replaced the other when they have nothing to do with each other. One says it should examine the affairs of the credit union, and the amendment says the auditor or a member of the audit committee can call a meeting any time he wants, but it doesn't address what that particular section addresses.

**Mr Owens:** I'll ask Mr Abols to address that.

**Mr Abols:** That's correct, but the amendment actually does two things. It deletes what is currently there, and it does that because the view is that it really is not necessary. If you look at section 138 of the bill, it envisions regulations which will in detail spell out the duties of the audit committee. Those duties, as statutory duties, of course are ones the audit committee has to address and fulfil, and they will include, of course, as one of its



principal duties, examining the financial affairs of the credit union.

We've just used that section because it's there. It's opened up now that we've deleted an unnecessary section and introduced something that, you're right, is not related to it, is a different issue altogether. But the fact that an audit committee has responsibility to examine the affairs of a credit union is not being lost. It'll still be there, but it'll be there as one of the prescribed duties of the audit committee in regulation.

**Mr Owens:** If you look at the amendment to the next section, there's a follow-through with respect to the reporting of the results of the meeting. In terms of what Mr Abols has said, along with the second amendment, we'll address the kind of concern you have with respect to the directedness of the section.

**Mr Kwinter:** I accept the explanation. I just feel that if we had had that explanation originally of why this thing was being amended, it would have saved this discussion.

**Mr Owens:** Perhaps.

**The Chair:** Any further comment? Shall the amendment carry? All those in favour? Opposed? Carried.

Shall section 134 of the bill, as amended, carry? All those in favour? All those opposed? Carried.

Section 135 has an amendment.

**Mr Owens:** I move that subsection 135(1) of the bill be struck out and the following substituted:

"Reports by committee

"(1) The audit committee shall report to the board within sixty days after each committee meeting or at the next board meeting, whichever is earlier, setting out the results of the meeting."

As I just explained to Mr Kwinter, this is the companion amendment which adds the missing process that the member was concerned about.

**The Chair:** Any comments? Shall the amendment carry? All those in favour? Opposed? Carried.

Shall section 135 of the bill, as amended, carry? All those in favour? Opposed? Carried.

Shall section 136 carry? All those in favour? Opposed? Carried.

Section 137 has an amendment.

**Mr Owens:** I move that subsection 137(4) of the bill be struck out and the following substituted:

"Right to make representations

"(4) At the meeting, the committee member is entitled to make representations about the resolution for his or her removal."

This is consistent with other like amendments, to remove language that in the context of a section is superfluous.

**The Chair:** Any comments? Shall the amendment carry? All in favour? Opposed? Carried.

Shall section 137 of the bill, as amended, carry? All those in favour? All those opposed? Carried.

Shall section 138 of the bill carry? All those in favour?

Opposed? Carried.

Section 139 has an amendment.

**Mr Owens:** I move that subsection 139(2) of the bill be struck out and the following substituted:

"Assistance

"(2) Subject to the board's approval, which shall not be unreasonably withheld, the committee may retain one or more auditors or may call upon the stabilization authority for the credit union, the league of which the credit union is a member or the deposit insurer to assist it in determining whether a misappropriation or misdirection has occurred."

This amendment is made in order to address concerns about the audit committee's unfettered discretion to hire professional staff. The amendment makes the decision subject to the board's approval. It's our view that this places some level of accountability. At the same time, it ensures that the audit committee's independence is not affected by the board's oversight function, and the amendment makes it clear that the board cannot withhold its approval unreasonably.

**The Chair:** Any comments? Shall the amendment carry? All those in favour? Opposed? Carried.

There's a further amendment to section 139.

**Mr Owens:** I move that subsections 139(4) to (9) of the bill be struck out.

This is an amendment we are making in response to concerns that were made to us by representatives of the credit union and caisses populaires movement that the power to suspend directors, officers, committee members or employees is more appropriately resting or should rest with the board of directors, who are ultimately responsible for the management of the credit union.

**The Chair:** Any comments? Shall the amendment carry? All those in favour? Opposed? Carried.

Shall section 139, as amended, carry? All those in favour? All those opposed? Carried.

Shall section 140 of the bill carry? All those in favour? All those opposed? Carried.

Section 141 of the bill has an amendment.

**Mr Owens:** I move that the English version of subsection 141(1) of the bill be amended by striking out "president" in the second line and substituting "chair."

This is consistent with amendments that were approved earlier in terms of how the credit union movement terms its chief executive officer.

**The Chair:** Any comments? Shall the amendment carry? All those in favour? Opposed? Carried.

There's a further amendment to section 141.

**Mr Owens:** I move that subsection 141(3) of the bill be struck out.

The deletion of the subsection is a consequential amendment that arises from the changes that we've made to subsection 141(1).

**The Chair:** Any comments? Shall the amendment carry? All those in favour? Opposed? Carried.

Shall section 141 of the bill, as amended, carry? All those in favour? All those opposed? Carried.

Section 142 has an amendment.

**Mr Owens:** I move that section 142 of the bill be struck out and the following substituted:

"Duties of corporate secretary

"142. The corporate secretary shall ensure that the records of the bylaws of the credit union and the minutes of board meetings are kept up to date."

What this amendment does is to clarify that the corporate secretary's responsibility is not to personally produce or keep records up to date but to supervise the production and updating.

**The Chair:** Any comments? Shall the amendment carry? All those in favour? Opposed? Carried.

Shall section 142 of the bill, as amended, carry? All those in favour? All those opposed? Carried.

Section 143 has an amendment.

1620

**Mr Owens:** I move that the French version of subsection 143(1) of the bill be amended by striking out "une de ses filiales" in the sixth line and substituting "un membre du même groupe qu'elle."

Again this is the correction of terminology in the French version of subsection 143(1).

**The Chair:** Any comments? Shall the amendment carry? All those in favour? Opposed? Carried.

There's an additional amendment.

**Mr Owens:** I move that the French version of subsection 143(2) of the bill be amended by striking out "une de ses filiales" at the end and substituting "un membre du même groupe qu'elle."

Again we're correcting the terminology in the French version of subsection 143(2).

**The Chair:** Any comments on the amendment? Seeing none, all those in favour? Opposed? Carried.

Shall section 143 of the bill, as amended, carry? All those in favour? Opposed? Carried.

Shall sections 144 through 153, inclusive, carry? All those in favour? Opposed? Carried.

Section 154 has an amendment.

**Mr Owens:** I move that the French version of subsection 154(2) of the bill be amended by striking out "versées" in the second line and substituting "en cause."

**The Chair:** And the explanation is a correction of the French translation?

**Mr Owens:** Again cleaning up the French-language version.

**The Chair:** Any comment? Shall the amendment carry? All those in favour? Opposed? Carried.

Shall section 154 of the bill, as amended, carry? All those in favour? Opposed? Carried.

Section 155 has an amendment.

**Mr Owens:** I move that the French version of subsection 155(1) of the bill be amended by adding at the end "en cause."

**Mr Glower:** The explanation is again just cleaning up the French translation and clarifying what it says in English in French.

**Mr Owens:** I was trying to clarify with Mr Glower my pronunciation.

**The Chair:** Shall the amendment carry? All those in favour? Opposed? Carried.

Shall section 155, as amended, carry? All those in favour? Opposed? Carried.

Section 156 has an amendment.

**Mr Owens:** I move that clause 156(b) of the bill be struck out and the following substituted:

"(b) a report of an accountant, lawyer or other professional person whose profession lends credibility to a statement made by the person."

What we're doing is deleting the reference to "notary," as a notary does not have the same professional standing as a member of the law society or an accountant.

**Mr Kwinter:** I have a bit of concern about this amendment. We talk about a report of an accountant, lawyer or other professional. Particularly because we're dealing with credit unions, which are groups that are en famille—you know, it's not the same sort of thing where you go to a bank—there could be wills that have been notarized, there could be bills of sale that have been notarized, there could be promissory notes that have been notarized, and I think in the legal description that would be considered a report. If someone comes to a credit committee or does whatever it does, and says, "I have a notarized copy of a will bequeathing this property to me; I have a notarized copy of"—whatever it is—"this bill of sale," it would seem to me that if that officer or employee of the credit union relies on that because it has been notarized, that should be an acceptable reason for not holding that employee liable.

It doesn't in any way detract from what is going on, but it would seem to me that a notary in that case would have as much standing as an accountant or a lawyer because he has satisfied himself as to the validity of that document and has notarized it. He's notarized the signature, that it took place, whatever it is, and I don't see why it shouldn't stay in there.

**Mr Abols:** First of all, by deleting "notary" we've achieved the same standard that you'd find in similar provisions in other financial legislation. If you look to some of the federal legislation, they refer to "notary," but it's really "notary" as you would use the term in Quebec where notaries are the equivalent of lawyers.

The intention here is that you can rely on reports of professionals who have to meet a much higher standard than a notary public does; namely, they are governed by a some disciplinary body, and there are certain recourses, if you're misled by a professional, that you can take against the professional.

I know from personal experience that to become a notary public all I had to do was submit \$100 or something and I get a certificate that tells me to be a notary public. That's not a very high standard in terms of certifying even, let's say, the validity of a certain document.

In Ontario, as it turns out, I would say that the majority of notary public are lawyers in any event, because they simply take on that designation on their call



to the bar as a matter of course when they're setting up practice. I'd say in the majority of circumstances it's not an issue, because the notary publics in Ontario and lawyers are often one and the same.

**Mr Kwinter:** Without really prolonging the debate, if all we were doing was applying the same standards of care and of procedure to credit unions as we do to financial institutions, we would not have to have a separate bill to deal with credit unions. Credit unions are unique. We keep talking about how unique they are and how we want to have different standards for small ones and different standards for big ones.

I'm trying to think of my experience as the minister responsible for administering credit unions. Because of the nature of the credit union, we're talking here not about who is going to appear and make—it's a report, and we're talking about a provision that says a director, officer, member of a committee or an employee of a credit union is not liable under sections 145, 146 and 154 if the individual relies in good faith.

I can see where some legal case could revolve around the fact that a borrower of the credit union gave, in support of his loan or whatever the transaction was, a notarized statement by a notary and said, "Here's the proof; I had this notarized." It's quite common to say, "You get me a notarized statement and we'll accept it."

The employee makes a decision in part based on that notarized statement. I'm talking about the employee of the credit union who made the decision based on that. You're saying, "I'm sorry, but you are liable because the act does not provide for you to rely on a notary's affirmation or confirmation of what this person said."

I don't understand. I think it gives the employee that added bit of protection that I think is warranted, but it also allows the customer of the credit union to use a document that will be accepted by the employee because he knows that under the act he can use that as the basis to make a decision. I'm not convinced that any great purpose is served by eliminating the fact that a notary can participate.

I take your point about Quebec where a notary in many cases, especially in a real estate transaction, has greater standing than a lawyer. And I know that in Mexico it's absolutely essential, that you can't do anything without a notary. But we're not talking about Quebec. We're talking about Ontario and we're talking about documents going to bolster some sort of presentation at the credit union, and we're trying to give that employee of that credit union some protection in terms of what they base their decision on.

1630

**Mr Abols:** I'd just make two observations. Section 156 doesn't address the liability of employees; it addresses liability of directors, officers and members of committees, and these are people who have significant management functions of one sort or another. It's not the clerk who simply—

**Mr Kwinter:** No, no, no. Excuse me. It says, "A director, officer, member of a committee or an employee."

**Mr Abols:** I stand corrected, then. But the other observation I have to make is that when we talk about a report of a professional, though, it probably goes much beyond simply saying, "I attest to the fact that so-and-so signed a document on a certain day." I could look into this matter further, but I believe that in terms of a notary's ability and power to do that, that's probably governed by whatever act recognizes notaries public in this province. We're talking about a report that goes much further than that and provides some advice on the legality of a certain issue, and notaries public in Ontario, unlike those in Quebec, don't provide that kind of advice. When we talk about "report," I would suggest that's what it connotes. It doesn't connote how you establish the validity of a document. That's another issue, and that's probably governed by legislation that governs the activities of notaries public.

**Mr Elston:** I'm interested in "or other professional person whose profession lends credibility to a statement made by the person." I'm just trying to think of who that might be: I suppose a broker reporting on insurance, or the loan being insured with the rider going to the credit union as backup.

**Mr Abols:** Or, let's say, a structural engineer commenting on a particular investment in a house or a loan on a housing project.

**Mr Elston:** But the circumstance is that there has to be a professional recognition, as opposed to someone whose position could be seen to represent a position of knowledge? Let's say Murray Elston was involved with some financial affairs at a bank or something, and you needed a statement so I could move my assets into a credit union. Would a statement by the bank manager be seen to be a profession, for the purposes of this section, that could be relied on without problems for the director or officer or employee?

**Mr Abols:** It's a question of fact. We don't anywhere in this act, and you won't find this in any legislation we've looked at, have a definition of what it means to be a professional. What we'd rely on here is really the common law, because it's been recognized that the concept of "profession" and who is a professional has been an expanding one and has grown. I suppose, in the case of a bank manager, he would probably be regarded, in common parlance, as a professional. If the issue ever became litigated, I would suggest that a court probably would find a bank manager to be a professional.

But there's been a deliberate attempt not to define what a professional is because it's a concept that does grow with the times, and there is a whole body of case law that has suggested that you can't really pin down who a professional is just by virtue of a degree that they hang on their wall. In the past accountants weren't perhaps recognized as professionals at common law, but that certainly has changed.

**Mr Elston:** Are administrative members of the Ministry of Finance considered to be professionals?

**Mr Abols:** Well, people like myself are, because I'm a lawyer as well. And my colleague, Mr Glover, who's an accountant.

**Mr Elston:** Oh, so there's some personal involvement in the development of this section to explain notaries.

**Mr Owens:** That comes next.

**Mr Elston:** Usually you try to do is make it fairly inexpensive, or at least fairly reasonable, to move assets from one place to another, and obviously you don't necessarily want to have to get an accountant in to verify that you have these assets and that this statement of your mortgage or whatever—unless there's going to be a loan going out. I'm just trying to make sure that we're not going to make it necessary for an individual to pay a professional fee if that's not really required. I just don't want people to be stuck with extra costs if that isn't required, or that the directors in the credit union don't have to set a policy that says, "The section says professionals, so we've got to find a professional or we're going to get ourselves into trouble," meaning a profession that's regulated through some kind of public body to which there is applied some obligation.

**Mr Abols:** No, it's not confined to people who are regulated.

**The Chair:** Any further comments? Shall the amendment carry? All in favour? Opposed? Carried.

Shall section 156, as amended, carry? All those in favour? Opposed? Carried.

Shall sections 157 through 160, inclusive, carry? All those in favour? Opposed? Carried.

Section 161 has an amendment.

**Mr Owens:** I move that subclause 161(1)(a)(i) of the bill be struck out and the following substituted:

"(i) is licensed under the Public Accountancy Act."

This is the Glower amendment that clarifies that the auditor must be an accountant licensed under the Public Accountancy Act. This is consistent with the definition of "auditor" in section 1 of Bill 134.

**The Chair:** Any comments? Shall the amendment carry? All those in favour? Opposed? Carried.

Shall section 161 of the bill, as amended, carry? All those in favour? Opposed? Carried.

Shall sections 162 through 169, inclusive, carry? All those in favour? Opposed? Carried.

Section 170 of the bill has an amendment.

**Mr Owens:** I move that subsection 170(2) of the bill be amended by striking out "and shareholders" in the second line.

All this amendment does by deleting the reference to shareholders is confine the auditor's reporting obligation to members. This does not affect the right of shareholders to receive financial statements or to have the auditor answer questions whenever the auditor decides to attend a meeting of shareholders.

**Mr Elston:** I'm just interested in the effect of this, if we say just to members. Is there any obligation at all on the auditor, when an offering is to be made for the sale of shares, to respond to inquiries of a potential shareholder or buyer? For instance, if, once I've seen the statement of public disclosure, I say, "I want to talk to your auditor about that," does this mean he or she cannot

respond to any inquiries that might be of interest?

**Mr Abols:** It doesn't mean they can't respond but I don't know whether they would want to respond, given the potential for liability and the terms of their retainer. Their client is the credit union; it isn't the general public. Nothing would stop you from asking the auditor these questions; whether they would answer you is another issue.

**Mr Elston:** But presumably the public disclosure would contain some information that would probably be validated by the auditor, and if you were doing the due diligence in terms of the inquiries, where would you go otherwise than to the auditor with respect to his or her reports?

**Mr Abols:** You're right, and this section doesn't in any way effect that kind of access, but again, I suppose the auditor's position may be: "You've got the offering statement there. You've got the report there. The report speaks for itself. I've certified the report."

If you're asking whether there's somewhere in the bill where you have a statutory right as a member of the public to question the auditor, no, there isn't.

**The Chair:** Any further comments? Shall the amendment carry? All in favour? Opposed? Carried.

Shall section 170 of the bill, as amended, carry? All those in favour? Opposed? Carried.

Shall section 171 of the bill carry? All those in favour? Opposed? Carried.

Section 172 has a Liberal amendment.

**Mr Elston:** I move that section 172 of the bill be amended by adding the following subsections:

"Further extension of examination

"(7) The corporation may, by written direction, require the auditor to enlarge or extend the scope of an examination conducted under this section or the corporation may conduct its own examination as fully and to such extent as it considers appropriate.

"Report

"(8) An auditor who receives a direction under subsection (7) shall report the results of the examination to the director and to the corporation."

This is a suggestion that came from the corporation when it was in front of us. I've taken this as a suggestion they put forward basically so we could talk about it here and discuss the relevant merits of it. Generally speaking, we didn't have a lot of time when the presentations were made to go into some of these issues and the full nature of what they would do for the administration of the act, so I've offered these by way of amendment to elicit a response from parliamentary assistant and to get some kind of feel for whether the presentation by the corporation was actually seen to be going too far by the ministry or whether it is prepared to allow an increase in the ability to examine.

1640

**Mr Owens:** I'll ask Mr Glower to comment.

**Mr Glower:** First of all, this section really pertains to the director's power to conduct examinations and, when the auditor's in the process of doing his audit, to be



asked by the director to expand it.

OSDIC, under certain circumstances, has the power to conduct its own examinations as well as the ability to rely on the report of the auditor. I think it was our review that if you do this sort of thing, you've now added a further layer as part of the normal scope of what the auditor would do. Credit unions today would argue that between the ministry examination and the requirement to have an audit it is more than adequate, in general terms.

In areas of risk, when a credit union is experiencing problems and is under the supervision of a stabilization authority, that's where we definitely believe that established authority, whether it's OSDIC or a delegate established authority, should have the right to conduct examinations for its purposes and that it has that power. We didn't want to add another layer in terms of a day-to-day requirement for an audit, but where there's an area of risk involved, that's where it's been added.

**Mr Elston:** So the position really is that it's not necessary. If that's the case, I withdraw my amendment.

**The Vice-Chair (Mr Jim Wiseman):** Shall section 172 carry? Carried.

We have an amendment to section 173(2).

**Mr Owens:** I move that subsection 173(2) of the bill be amended by striking out "regulatory capital" in the fourth line of clause (b) and substituting "total assets," by adding "or" at the end of clause (b), by striking out "or" at the end of clause (c) and by striking out (d).

I'll ask either Mr Abols or Mr Glower to respond.

**Mr Glower:** I'll respond. This is a model that has been put together by the Canadian Institute of Chartered Accountants and has been adopted by the federal regulators. What we in fact are replacing here is that by saying one half of 1% of capital, when you look at a credit union you would have a so-called materiality level of approximately \$50,000, and it just doesn't work. "Total assets" would raise that materiality level to a proportional amount for a credit union as "regulatory capital" would be for a bank or a trust company.

In consultation with the Canadian Institute of Chartered Accountants, they agreed that "total assets" is the correct measure in credit union terminology just because of the size of the assets. The standard remains the same; we're just trying to get the dollars to be equivalent.

**The Chair:** Any comments? Shall the amendment carry? All in favour? Opposed? Carried.

Shall section 173, as amended, carry? All those in favour? Opposed? Carried.

Section 174 has an amendment.

**Mr Owens:** I move that section 174 of the bill be amended by inserting after "be" in the fifth line "authorized by this act or."

The amendment clarifies that there are other parts of the bill that will specifically deal with the business powers and activities of a credit union.

**The Chair:** Any comments? Shall the amendment carry? All those in favour? Opposed? Carried.

There's an additional amendment to 174.

**Mr Owens:** I move that paragraph 6 of section 174 of the bill be struck out and the following substituted:

"6. Promote merchandise and services to its members or the holder of any payment, credit or charge card issued by the credit union, its subsidiaries or affiliates."

What this amendment does is limit the ability of a credit union to promote merchandise and services. They will only be able to do so to its members or persons holding charge or credit cards issued by the affiliates or subsidiaries. This brings the powers in line with comparable federally regulated financial institutions.

**The Chair:** Any comments? Shall the amendment carry? All those in favour? Opposed? Carried.

Shall section 174 of the bill, as amended, carry? All those in favour? All those opposed? Carried.

Section 175 of the bill has a PC motion.

**Mr David Johnson:** I move that subsection 175(4) of the bill be amended by adding after the word "subsidiary" and before the word "or" in the second line the words "financial institution or cooperative affiliate."

The difficulty now is that this builds on an amendment I placed earlier this morning with regard to section 5. That amendment, as we recall, was lost, so I suspect this amendment doesn't make any sense at this point.

**The Chair:** Would you like to withdraw your amendment?

**Mr David Johnson:** In that context, I don't think it makes sense to pose this without having section 5, and I'd be forced to withdraw.

**Mr Owens:** You're never forced, David.

**The Chair:** Mr Owens has an amendment.

**Mr Owens:** I move that the French version of subsection 175(4) of the bill be amended by striking out "recommander" in the fourth-last line and substituting "renvoyer".

Again this is a correction of the French-language terminology.

**The Chair:** Any comments? Shall the amendment carry? All those in favour? Opposed? Carried.

Shall section 175 of the bill, as amended, carry? All those in favour? Opposed? Carried.

Shall sections 176 of the bill through 179, inclusive, carry? All those in favour? Opposed? Carried.

There is an amendment to section 180.

**Mr Owens:** I move that subsection 180(2) of the bill be struck out and the following substituted:

"Exception

"(2) Subsection (1) does not apply in the context of,

"(a) a voluntary dissolution of the credit union; or

"(b) a security interest given on behalf of a league or financial institution if the security interest represents security for the obligations of the league or financial institution to settle for payment items in accordance with the bylaws and rules of the Canadian Payments Association."

The reason we're putting this amendment forward is that we want to recognize a further exception to the

prohibition against the credit union appointing a receiver. The credit union may appoint a receiver under a security agreement with a league or other financial institution for the purpose of allowing that league or financial institution to participate in the Canadian Payments Association clearance system on behalf of the credit union.

**The Chair:** I would like to call on Mr Johnson now. I understand his motion would be an amendment to the amendment that has been introduced by Mr Owens and would therefore ask him to read it into the record.

**Mr David Johnson:** To move that amendment to the amendment, I move that subsection 180(2) of the bill be amended by adding after the words "credit union" in line 3 the words "or in the context of a security interest granted to a financial institution in relation to the settlement of payment-related obligations on behalf of the credit union."

**Clerk of the Committee:** To move an amendment to the amendment, it would be amending the amendment by Mr Owens in clause (2)(a), after "credit union," I think.

1650

**Mr David Johnson:** Let's just have a look at this. I think it's probably in (2)(b). Now, whereabouts in (2)(b) is it?

**Mr Elston:** If I might volunteer some assistance, I really think, as is often the case in this Legislature, the Conservatives and the New Democrats are on the same wavelength.

**Mr Owens:** At least we have a wavelength.

**Mr Elston:** I think the two amendments, interestingly enough, are trying to get to the same thing, except I believe the government amendment is perhaps slightly more comprehensive in its wording. I think you're winning the same point.

**Mr Kwinter:** Just to clarify, I'm sure that the Conservative amendment was to amend the original subsection 180(2) and that it was to appear after the third line "credit union." It is not meant to amend the amendment. But what has happened is that, as my colleague has said, the amendment to the amendment I think captures the exact intent of what the PC amendment is and now makes the PC amendment redundant, because it is even more expansive in the government's amendment to the section.

**The Chair:** I understand exactly what you're saying, Mr Kwinter, as I'm sure most of the members do. I guess what we need now is a consensus from the members.

**Mr David Johnson:** Can we have an explanation from the staff of the government's amendment and how that covers the intent? I'm sure the staff has seen the amendment I proposed.

**Mr Abols:** Our view is that your proposed amendment has the same effect as the government's amendment. It's just that what we've done here is point out that the security obligation—they call it settlement of payment related to obligations on behalf of the credit union. We note that the settlement is governed by the bylaws and rules of the Canadian Payments Association. Basically, it's a cheque-clearing service the Canadian Payments Association provides. The league, on behalf of its mem-

ber credit unions, participates as a member of this cheque-clearing service. In order to that, it has to guarantee the indebtedness of other members of that institution. It can only do so if it in turn can rely on a financial commitment by its own members.

That's the effect of the government motion, and I suggest that's the effect of your motion as well. We've done it in a few more words. That's essentially what it amounts to.

**The Chair:** What may be required to happen now, Mr Johnson is that we can vote on it, most certainly, but if it's agreeable to you to withdraw your motion, understanding that the government motion will effectively do the same thing that your motion is intended to do, that would be appreciated, but it's certainly up to you.

**Mr David Johnson:** I'll accept that explanation and withdraw my amendment.

**The Chair:** Mr Owens, you've given your explanation. Is there a requirement for any further comments at this time on the government amendment?

**Mr Owens:** No, sir.

**The Chair:** Seeing none, shall the amendment carry? All those in favour? All those opposed? Carried.

Shall section 180 of the bill, as amended, carry? All those in favour? Opposed? Carried.

Section 181 of the bill has a government amendment.

**Mr Owens:** I move that section 181 of the bill be amended by adding the following clauses:

"(a.1) a member acting as personal representative for any person;

"(a.2) a personal representative of a member;"

This amendment addresses an ambiguity about the ability of a member's personal representative to make deposits on behalf of the member.

**Mr Kwinter:** I understand the "personal representative of a member." I don't quite understand "a member acting as a personal representative for any person." It would seem to me that earlier today we talked about prohibitions against people who were not members of the credit union or who were not in some way captured in the broad definition of putting deposits or participating in a credit union. Now we have a provision that allows a member acting as a personal representative for any person to make a deposit. I don't understand that. I'm not objecting to it; I just don't understand it. I'd like to get an explanation of it.

**Mr Abols:** Perhaps the discussion earlier this morning was a little bit too narrowly focused, and I didn't recall this government motion that was going to be coming up, but effectively it would address some of the concerns raised earlier this morning about, for example, a member wanting to set up a trust account on behalf of somebody in their own capacity as a member; they're the trustee; can they do so?

If their trust function simply is confined to managing a deposit account of some sort, a trust account, this would allow them to do it. Whether they're right to act as a fiduciary beyond that and use the services of a credit union, administrative services and so on, is another issue.



But in terms of opening up a banking account, they can do so.

The best example of this would be a lawyer. A lawyer is the member of a credit union. He would be setting up a trust account, perhaps, on behalf of some client and would be just using the banking facility. I'm not talking about the lawyer's own trust accounts; I'm talking about a trust account on behalf of one of his clients. This would facilitate something like that, or let's say a family situation where you have a member of a family who doesn't want to become a member or can't become a member but their parent, let's say, the parent of a child, is a member and wants to set up a trust account on behalf of the child. This would allow them to make deposits into that trust account.

In my earlier comments, I think I was a bit premature and forgetful of this provision, so I'd have to correct my earlier comments.

**Mr Kwinter:** Just for further clarification, I understand what you're saying, but my reading of this is that if I happen to meet someone who is not related to me and I say, "You know what? If you deposit your money in my credit union, you're going to get a better rate of interest than you get at the bank; give me your money and I will deposit it for you in your name," I read this as saying that when you take a look at section 181, it talks about "a credit union may accept deposits only from," and then it lists all the people it can only accept deposits from; now you're adding a provision that says "a member acting as personal representative for any person", not for trusts, not for family members, but for any person, which seems to imply that there's no restriction, that in fact anybody who wants to can have deposits made on their behalf without being a member, without being all the other things that are outlined in the rest of the provisions of 181. All I'm asking for is an explanation of that.

**Mr Abols:** Indeed that's correct. For example, Her Majesty, in right of Canada, can make deposits with a credit union but the federal government doesn't have to become a member with a particular credit union. We have expanded in this respect the deposit-taking capabilities of a credit union.

But getting back to the earlier concern, which I think is a genuine one, which is, somebody says to you, "Hey, I've got a load of money here and I don't want to particularly be responsible for depositing it or be on anybody's records as a depositor; why don't you deposit it for me?" that wouldn't be possible because the concept of personal representative is defined at the beginning of the act and it states "represents another person" as the circumstances require and includes people such as a trustee, executor, administrator, committee, guardian, tutor, curator or so on. You'd have to demonstrate that you are the personal representative as contemplated by the act, not just some person off the street and you're perhaps trying some kind of money-laundering scheme or something of that nature.

**Mr Kwinter:** That is exactly my point, and I would suggest that maybe, rather than saying "for any person"—"any" is very, very broad; it's "any person"—that there be some specificity as heretofore provided for as to who

these people can be. That is the point I'm making. Right now you're saying, "This is all covered and they can do this, that and the other thing." But my reading of this says that it's the personal representative for any person, whether it's someone who wants to launder money—exactly one of my concerns. I think there should be, as I say, more specificity as to who it is or what is the definition of the eligible people who can be in here. Otherwise, you don't need this provision, because it says you can accept deposits "only from" and it lists all these things, but in that "only from" it says "from anybody." So why do you have to say "only" from and then say "anybody"? It doesn't make any sense, unless you define who those people are whom a member can act as a personal representative of.

1700

**Mr Abols:** But it doesn't say, "from anybody." It says, "from the member." I suppose the safeguard we're looking to is the fact that the money is channelled through a member and then again, in theory, you know who the member is. The member fits within the bonds of association and that's one of the checks we have there.

Maybe this is open for discussion. We could instead substitute "or such other prescribed persons," and then we can deal with trying to create greater specificity in regulation, because I don't think we can do so in this kind of open forum. That might be a worthwhile amendment.

**Mr Elston:** I was interested in looking at the list, and while you say you can accept deposits from municipalities, you don't mention accepting deposits from, for instance, the 4-H club of Brussels, or something. Could the 4-H club, for instance, be a member, in which case an agent or a personal representative could act for that member, or can you only be an actual person to be a member?

**Mr Abols:** No, clearly it's contemplated that when we're talking about corporate members, they would be acting through their personal agents, of one sort. This in no way confines that. A member, whether a corporate or individual member, can make deposits. If a 4-H club is not a member, that's another issue and whether somebody on behalf of that 4-H club can do so, I think it has to be acknowledged that Mr Kwinter has a good point, that it may be too broad and we can perhaps—

**Mr Owens:** Stand it down and allow leg counsel to—

**Mr Elston:** While Monte was probably right and in some ways, it maybe is too broad, I just wanted to make sure that there was room for some of these unincorporated associations to actually participate in credit unions, because it's not uncommon to have local small organizations coming together; for instance, a credit union representing or holding out its office to assist in raising money for a charitable venture in a community to help out in the case of a fire or something like that. I just want to make sure we're not restricting them from getting into lines of work which are slightly off the normal for that.

**Mr Abols:** This wouldn't do it because the membership eligibility potentially could be individuals, unincorporated associations or corporate members. If there's a 4-



H club, an unincorporated association, as a member it could in its own right make a deposit. There's no question about that.

**Mr Elston:** Is a municipality not able to be a member of a credit union?

**Mr Abols:** It can, but there may be situations where, like the federal government, it may not necessarily want to become a member of a particular credit union, for whatever reason, so this gives them the option that they can still park their money there but they don't have to participate in the credit union as a member.

**Mr Elston:** Let's stand down this section.

**Mr Owens:** Yes, my request was that we stand it down and allow for some time to draft it.

**The Chair:** All of section 181 then?

**Mr Owens:** I guess my question is with respect to the next amendment and whether or not it—

**The Chair:** We'd have to read it into the record.

**Mr Elston:** Actually, why don't we just stand the whole section down?

**Mr Owens:** I've been advised that maybe the easiest way to resolve this problem is to withdraw the section that we just spent a large number of minutes discussing, as the issue can be covered in regulation.

**The Chair:** Can you be more specific, Mr Owens?

**Mr Abols:** Actually, the motion we would have redrafted is the next motion which is essentially a motion that will allow the director to approve other persons or entities who can make deposits, so there's the director, the regulator, overseeing this. There's overlap here and by losing this, we lose nothing really.

**Mr Kwinter:** I was about to make the recommendation, but I turned the page and saw this next provision.

**The Chair:** So what are your wishes?

**Mr Owens:** I'm going to withdraw clauses 181(a.1) and (a.2).

**The Chair:** Okay. Now we will deal with the other amendment to section 181. Mr Owens.

**Mr Owens:** I move that section 181 of the bill be amended by striking out "or" at the end of clause (i), by adding "or" at the end of clause (j) and by adding the following clause:

"(k) other persons or entities approved by the director."

As we've had a large amount of discussion, I think this resolves the issue that was raised by Mr Kwinter with respect to the kinds of people who would be approved for the purposes of making deposits.

**Mr Kwinter:** I understand we spent a great deal of time on this, but unfortunately you've corrected one thing and you've compounded the problem.

I feel strongly that in your amendment of clauses 181(a.1) and (a.2), provision (a.2), "a personal representative of a member," is an important provision. Someone should be able to send somebody to make a deposit for them. To say that you're going to remove that I don't think is reasonable.

**Mr Owens:** I think, Mr Kwinter, that with respect to the amendment I just read, a director does or will, if this

is approved, have the ability to approve that kind of personal representative for the purposes of making a deposit. So I think what it does is that it answers your question with respect to keeping fairly close control, but also answers Mr Elston's concern with respect to not narrowing the ability of others to make deposits or to become members.

**Mr Kwinter:** With respect, I happen to be a member of a credit union, and if I were to send my son who is not a member of the credit union to make a deposit for me, surely he doesn't have to get the approval of the director to make that deposit?

**Mr Owens:** No, but I don't think that's, quite frankly, the issue. In terms of the parameters that the director would set out, it would not be the responsibility of you or your son, at the time you would like to make a deposit, to have the director make that decision. What I'm saying is that in terms of looking at the kinds of persons or individuals—I'm sure Mr Abols can jump in at any time—there will be some forward thinking done by the director with respect to designating who can make deposits.

**Mr Abols:** If I may speak to the matter, the initial motion was really drafted to allay certain concerns which quite frankly, at the staff level, were never there. My view as legal counsel to the ministry is that a personal representative can do just as you suggest. You come to the credit union, indicate your authority for doing what you're doing, and if it's done in the name of the member, it is the member's deposit that is being made or the member is conducting some transaction. We all recognize the fact that members, like anybody else, may be incapacitated, may not be able to conduct their affairs. So the ability to appoint a power of attorney or to appoint somebody or designate somebody as representative is certainly there and it really goes without saying.

What that motion intended to do was to allay, in my view, misplaced concerns. From a legal perspective, I don't see that was ever a problem, and by introducing the motion, we've created more problems. Withdrawing it, I feel, doesn't prevent the situation you describe from happening.

**Mr Elston:** To make sure that we're not going to stick just to the personal representative in its formal circumstance, where I actually have a power of attorney or some other document—

**Mr Owens:** No, I don't think that's the intent.

**Mr Elston:** It can be an agency, which I really think is what Mr Kwinter was talking about, just a clear agency saying, "Listen, Murray, when you're down there, take my deposit in and make this deposit for me," or something, so an agent, as opposed to a personal representative in the formal sense, is going to be covered by this.

**Mr Abols:** The definition of "personal representative" includes an agent, so that concept is there.

1710

**Mr Elston:** So everybody will be covered without going back to this.

**Mr Abols:** Yes. For example, as you point out, with a corporate member or an unincorporated association, you



can't physically have the corporation or the unincorporated association do it. They do it through an agent, who in effect is the personal representative of that member.

**The Chair:** Any further comments? Shall the amendment carry? All those in favour? Opposed? Carried.

Shall section 181 of the bill, as amended, carry? All those in favour? Opposed? Carried.

Shall sections 182 and 183 of the bill carry? All those in favour? Opposed? Carried.

Section 184 has an amendment.

**Mr Owens:** I move that the English version of subsection 184(2) of the bill be amended by striking out "money" in the first line.

The reason for this amendment, removing the term "money," is that it will allow the credit union to borrow generally, and by that I mean they'll be able to borrow securities for the purposes of a swap transaction.

**Mr Kwinter:** This is really a matter of syntax: I just think it's a silly statement to say, "A credit union may borrow if authorized to do so by its bylaws." It should say it "may have the power to borrow." It made sense when you said "borrow money," but you want to take out the "money." In terms of syntax, to say "to borrow" just doesn't sound right. Anyway, carry on.

**The Chair:** Thank you for those comments, Mr Kwinter. Any further comments? Shall the amendment carry? All those in favour? Opposed? Carried.

There's an additional amendment.

**Mr Owens:** I move that the English version of subsection 184(4) of the bill be amended by striking out "money" in the second line.

Again this term is deleted to allow the credit union to borrow generally.

**The Chair:** Comments on this amendment? Shall the amendment carry? All those in favour? Opposed? Carried.

Shall section 184 of the bill, as amended, carry? All those in favour? Opposed? Carried.

Shall section 185 of the bill carry? All those in favour? Opposed? Carried.

Section 186 has an amendment.

**Mr Owens:** I move that clause 186(1)(c) of the bill be amended by inserting after "act" in the fifth line "the deposit insurer."

The purpose of this amendment is to allow the credit union to borrow from the deposit insurer for the purposes of liquidity. We're trying to correct a technical oversight.

**The Chair:** Any comments? Shall the amendment carry? All those in favour? Opposed? Carried.

An additional amendment.

**Mr Owens:** I move that subsection 186(5) of the bill be amended by inserting after "(4)" in the first line "and section 185".

We're addressing a technical oversight by including a cross-reference to section 185. The regulation exempting certain classes of personal property or transactions from the restriction on the pledging of assets is meant to be a total exemption.

**The Chair:** Any comments? Shall the amendment carry? All those in favour? Opposed? Carried.

Shall section 186 of the bill, as amended, carry? All those in favour? All those opposed? Carried.

Section 187 has an amendment.

**Mr Owens:** I move that subsection 187(4) of the bill be amended by striking out "may" in the second line and substituting "shall" and by striking out "a currency other than Canadian" at the end and substituting "Canadian currency."

The reason for the deletion of the phrase "a currency other than Canadian" reflects the fact that credit unions are community-based and we generally would have no reason to denominate any form of indebtedness in a currency other than Canadian currency.

**The Chair:** Any comments? Shall the amendment carry? All those in favour? Opposed? Carried.

Shall section 187 of the bill, as amended, carry? All those in favour? All those opposed? Carried.

Shall sections 188 and 189 of the bill carry? All those in favour? All those opposed? Carried.

Section 190 has an amendment.

**Mr Owens:** I move that section 190 of the bill be struck out and the following substituted:

"Monitoring by board

"190. The board of a credit union shall inform itself at each board meeting about the particulars of borrowings made since the last board meeting by the credit union."

This is an amendment that changes the requirement that the board monitor the borrowings of a credit union on a monthly basis to a period that corresponds to the time between board meetings. It's our view that it's not uncommon for a board to not meet monthly.

**The Chair:** Any comments? Shall the amendment carry? All those in favour? Opposed? Carried.

Shall section 190 of the bill, as amended carry? All those in favour? All those opposed? Carried.

Shall sections 191 to 194, inclusive, carry? All those in favour? All those opposed? Carried.

Section 195 has an amendment.

**Mr Owens:** I move that section 195 of the bill be amended by adding the following subsection:

"Exception

"(3) Subsection (2) does not apply to a loan less than a given amount if,

"(a) the bylaws provide that loans under the given amount need not be subject to the board's approval; and

"(b) the director has approved that provision in the bylaws."

The reason for this amendment is that it qualifies the restrictions as set out in subsection 195(2). The loans to an unincorporated association do not require the board's approval if a bylaw, which of course would have to be approved by the director, authorizes it to make certain loans without the board's approval. I firmly believe what we're doing here is trying to address the impracticality of having board meetings to deal with individual loans.

**The Chair:** Any comments? All in favour of the amendment? Opposed? Carried.

Shall section 195, as amended, carry? All those in favour? All those opposed? Carried.

Section 196 has an amendment.

**Mr Owens:** I move that subsection 196(2) of the bill be amended by striking out "for the time and on the conditions" in the second and third lines and substituting "on terms."

Simply, what we're doing is introducing more general terminology.

**The Chair:** Any comments? Shall the amendment carry? All those in favour? Opposed? Carried.

Shall section 196 of the bill, as amended, carry? All those in favour? All those opposed? Carried.

Section 197 has an amendment.

**Mr Owens:** I move that subsection 197(1) of the bill be amended by adding at the beginning "If its bylaws authorize it to do so."

This amendment clarifies that the credit union must seek its members' approval before applying for a particular lending licence. Again, this is consistent with the principle that a credit union is a cooperative financial institution and run by its members.

**The Chair:** Any comments? Shall the amendment carry? All those in favour? Opposed? Carried.

There is an additional amendment.

**Mr Owens:** I move that section 197 of the bill be amended by adding the following subsection:

"Lower lending limits

"(3.1) The director may lower a credit union's lending limit if he or she believes on reasonable grounds that its current lending limits may adversely affect the interests of members, depositors or shareholders."

The reason for this amendment is that it's a clarification that the director's power to amend a lending licence under subsection 197(3) includes the ability to lower lending limits. Subsection 197(3.1) also introduces a criterion governing the exercise of that power.

**The Chair:** Any comments? Shall the amendment carry? All those in favour? Opposed? Carried.

Another amendment.

**Mr Owens:** I move that subsection 197(4) of the bill be struck out and the following substituted:

"Transition

"(4) A credit union that has a bylaw in effect on the day this subsection comes into force authorizing it to lend money with respect to specified classes of loans shall be deemed to hold a lending licence with respect to prescribed classes of loans that are comparable to the classes specified in the bylaw with a lending limit for each such class of loan as set out in the bylaw on the day this subsection comes into force."

Subsection 197(4) has been rewritten to ensure that both the lending limits and the classes of permitted lending under a credit union's bylaws, as those bylaws existed prior to Bill 134 coming into force, are grandfathered.

1720

**Mr Elston:** If this allows grandfathering but the director believes the limits are too high, does this mean the bylaws are automatically grandfathered, or are they automatically lowered? It would seem to me (3.1) would have something to say about subsection (4); at least there may not be an automatic grandfathering in these clauses. Is that right?

**Mr Abols:** No. Subsection 197(3.1) is an intervention power. On the day this bill comes into force, everything that exists there now on the credit union's books is grandfathered. It's not to say that the director may not in an individual case say, "Something's gone awry here and I'm going to revisit your lending limits in your bylaws and lower them," or in what we call now a lending licence as opposed to a bylaw.

This is an intervention power. Unless a director takes some kind of regulatory action, they live with what they have prior to the bill coming into effect.

**Mr Elston:** What sort of work do they have to do around changing the bylaws in these credit unions? Is there any specific action in terms of size of vote required to change a lending limit bylaw or any of that stuff, or is it just a majority of the board members?

**Mr Glower:** Under the current statute or the bill?

**Mr Elston:** Actually both, because you're going to grandfather the first, and then as soon as you grandfather it, the changes will have to be done under the new act.

**Mr Glower:** Under Bill 134, the members have to approve it, and I think it's a majority, to allow the credit union to engage in a type of lending. If they're not in personal lending, the members have to approve them to go into personal lending and then they would default to the regulation as to what their limits would be.

Under the current situation, and I think it's two thirds, the members vote not only for the type of lending but also the lending limit, the bylaw limit, and then that bylaw is submitted to the director for approval.

**Mr Elston:** So the director now has, in actual fact, almost a veto. If somebody tried to load up their lending areas before there was a coming into play of this act or whatever, basically the director is in charge to make sure there isn't something untoward occurring.

**Mr Glower:** Yes. But it wouldn't be in relation to what's going to be coming in the regulation. It would still be in relation to prudence.

**Mr Kwinter:** This discussion is causing me a bit of a problem. When we were dealing with 197(3.1), I was agonizing over whether I should get into it, because it really provides for the director to lower a credit union's lending limit. If you say the lending limits are set by a two-thirds majority of the members, I can understand your saying that if he wants to raise the lending limit he'd have to go to the membership. But by the same token, if the members decide that this is the limit, again we have this arbitrariness where he says, "In my opinion, we're going to lower the limit because I think it's in the best interests of everybody." It would seem to me that if he were going to do it, he should also have the authority of the people who gave him the power to set the limits in



the first place as opposed to doing it unilaterally.

**Mr Abols:** If I understand your question, you're saying that the director can only exercise his regulatory power if the members of the credit union permit him to do?

**Mr Kwinter:** The question was just asked, about this particular amendment, about who sets the lending limits, and it wasn't the director. It was either the board or the members, with two thirds of the members voting to set the limits.

**Mr Abols:** Actually, it's not as simple as that. I'll give you the broader context of the bill.

There are three components to the lending limit. One is that the regulations will prescribe maximum lending limits, the ceilings. So it doesn't matter what the director wants to impose; he's governed by those ceilings. The members themselves, though, notwithstanding the fact that a credit union can apply to the director and say, "Look, I want a maximum commercial lending limit of 35%" or "a maximum of 20%," can say, "No, I don't think our credit union really is in a position to take on that kind of risk, so we will only authorize you to go to the director and apply for a licence up to a 15% limit." That's not to say they'll necessarily get that, because the director then has to make an assessment from a regulator's perspective of whether this is appropriate for a given credit union.

So the exercise of regulatory power, yes, is independent of what the members think, because it's the responsibility of the regulator to bring another objective view about whether a particular limit is appropriate for a given credit union, given its track record, given its expertise and sophistication in making lending decisions, more particularly in commercial lending. So I don't see a contradiction here. One is a regulatory oversight function and the other one, the last amendment or motion, deals with the issue of who controls the credit union. The members do, and notwithstanding what management may think is appropriate, members may have a different view and say, "We don't want to incur this level of risk."

**The Chair:** Because there is a similarity to the next motion Mr Johnson will be dealing with, I thought I'd ask him if he wished any more clarification or wanted to make any comments on this particular motion.

**Mr David Johnson:** I gather, Mr Chairman, the government's motion has been moved. It seems there is the potential that it addresses what I was attempting to address, but the language is just a little different. I wonder if maybe the staff could comment. For example, it says "deemed to hold a lending licence with respect to prescribed classes of loans that are comparable" to the classes prescribed.

**Mr Abols:** Actually, the effect is different. The grandfathering provision that you're proposing really is not a grandfathering provision because it says that you have the benefit of both worlds. If the regulations prescribe higher limits, you automatically default to those higher limits.

The view that's reflected in the bill and the government motions is that, no, there shouldn't be this automatic default to the higher limits. We will grandfather

you, because there was strong representation that it was unfair. At one point when we had discussed the lending regulation and looked at some of the proposed limits, some of these limits would actually be lower than limits currently enjoyed by credit unions through their lending bylaws. So there was strong representation that: "This is unfair. We've lived with those limits. We've demonstrated that we can prudently exercise our powers under those limits, and here you're cutting them back."

The motion recognizes that problem and therefore says, fine, on day one, you continue to operate with your current limits. If you want to increase, if you want to go beyond those limits set out in your bylaws, which are now your new lending licence, you have to come to the director and make an application to increase those limits up to whatever the prescribed maximum might be in the regulation.

If I were to characterize your motion, it's not a grandfathering provision, really. It's a provision which creates a default mechanism which allows them to automatically move up to a higher lending limit without any kind of prudential regulatory oversight.

**Mr David Johnson:** Well, it would be grandfathering in the context that it would permit the limits that are in place today to exist, but it would go beyond that, as you say, to allow the limits of the regulations. What's the harm in that?

**Mr Abols:** The harm in that is that the regulation may prescribe limits far in excess of what they currently enjoy in their bylaws. For example, if it's a commercial lending limit and they now can make loans up to 10% of their assets and the regulation provides a 35% limit, that's a sizeable increase, and the regulator would have to be shown that there is the expertise, the ability to deal with that kind of risk, because commercial lending by its very nature is quite risky.

1730

**Mr David Johnson:** I must be missing something here, obviously. If there was no amendment, the limits within the regulations would apply, would they not?

**Mr Abols:** I'm sorry, the regulations would apply if there were no—

**Interjection:** They would have to get a variation.

**Mr Abols:** They would have to get a variation. The limits prescribe maxima up to which you can be granted a lending licence. The actual limit is governed by the lending licence and the regulations will effectively say that within each category of loan and lending licence you can grant limits up to *x* percentage, but it doesn't say that as of day one, all credit unions have these limits under the regulation. The regulation governs what those limits can be as reflected in the lending licence. So there has to be an application procedure, either for a new licence, if you've never done this kind of lending, or if you've done it and you have a prescribed limit, for a variation, an increase in your lending limit.

**Mr David Johnson:** Isn't the intent, though, that the credit union would be able to apply either what's in existence today or what's in the regulations?

**Mr Abols:** No. In fact, what we're carrying forward

is no different than what exists today. A credit union has its lending limits set out in its bylaws. If it wants to increase those lending limits, it has to come to the regulator for approval, so we're carrying forward that regulatory function in this bill. We're now calling these bylaws licences and we're going to set out the upper range in a regulation, which currently is not set out in a regulation. It is somewhat discretionary. There's just a so-called matrix that the regulator uses, and one of the criticisms has been: "That's not good enough. Set it out in the regulations."

**Mr David Johnson:** I see. I think maybe I'm starting to get around this in simplistic terms. The government's motion would permit the limits that exist today by bylaw, but in terms of the new limits, there would have to be a process to go through to establish them.

**Mr Owens:** That's right.

**Mr David Johnson:** And I guess my motion, the way it's worded, would automatically grant that without the discipline of some sort of approval process for the regulation part of it.

**Mr Abols:** That's right.

**Mr Elston:** Or for the members, who have to think about it as well.

**Mr David Johnson:** It's my opinion, then, that the government motion, in terms of the grandfathering—maybe I should give further thought to this but I guess we won't have time. I guess the grandfathering was primarily intended for what exists today and that is covered by the government amendment, so in that case I'll withdraw my amendment.

**The Chair:** Shall the amendment carry? All those in favour? All those opposed? Carried.

Shall section 197 of the bill, as amended, carry? All those in favour? Opposed? Carried.

Shall section 198 of the bill carry? All those in favour? Opposed? Carried.

Section 199 has an amendment.

**Mr Owens:** I move that subsection 199(4) of the bill be struck out and the following substituted:

"Monitoring by board

"(4) The board shall inform itself at each board meeting about the particulars of the investments made and held by the credit union since the last board meeting."

This is consistent with a previous amendment with respect to the reporting on loans and that there is an understanding that credit union boards may not meet on a monthly basis.

**The Chair:** Any comments? Shall the amendment carry? All those in favour? Opposed? Carried.

Shall section 199 of the bill, as amended, carry? All those in favour? All those opposed? Carried.

Section 200 of the bill has an amendment.

**Mr Owens:** I move that the French version of subsection 200(2) of the bill be amended by striking out "de manière à" in the sixth line and substituting "et n'a pas pour effet de."

Again we're changing the terminology used in the

French-language version.

**The Chair:** Any comments? Shall the amendment carry? All those in favour? Opposed? Carried.

There's an additional amendment to section 200.

**Mr Owens:** I move that subsection 200(3) of the bill be amended by adding "or a securities dealer" at the end.

I'll ask Mr Abols to explain this.

**Mr Abols:** Effectively, including a securities dealer in subsection (3) and making it for the purposes of this section not a financial institution means that any investment by a credit union in a securities dealer is subject to the restrictions on the amount or size of a single investment. The view is that unlike putting deposits in a loan and trust or bank, there's a qualitatively different degree of risk if you are putting deposits or investing money in a securities dealer, so it should be governed by some prescribed limit.

**The Chair:** Any comments? Shall the amendment carry? All those in favour? Opposed? Carried.

Shall section 200 of the bill, as amended, carry? All those in favour? Opposed? Carried.

Shall sections 201, 202 and 203 carry? All those in favour? Opposed? Carried.

Section 204 has an amendment.

**Mr Owens:** I move that subsection 204(1) of the bill be struck out and the following substituted:

"Transfer of assets

"204(1) A credit union shall not transfer all or a substantial portion of its assets unless the transfer is approved by special resolution or ordered under section 206."

This amendment clarifies that if a transfer of assets is the result of an order by the director or on an application by the stabilization authority, the shareholders' and members' approval is not necessary, given that the principal regulator, the director of credit unions, has already ruled that the transfer of assets will be in the best interests of the credit union.

**The Chair:** Any comments? Shall the amendment carry? All those in favour? Opposed? Carried.

Shall section 204 of the bill, as amended, carry? All those in favour? All those opposed? Carried.

Shall section 205 of the bill carry? All those in favour? All those opposed? Carried.

Section 206 has an amendment.

**Mr Owens:** I move that the French version of section 206 of the bill be amended by striking out "surveillance" in the first line and substituting "supervision." That's français.

**Mr Glower:** If I could just comment for the record, this was raised by the credit unions and caisses populaires in their joint submission as well as by Ste-Anne-Laurier in its submission, that the term "surveillance" was not an accurate reflection of the English translation. We've gone to great lengths to make an adequate correction, so "supervision" is acceptable. I just wanted that noted.

**The Chair:** Any other comments? Shall the amendment carry? All those in favour? Opposed? Carried.



Shall section 206 of the bill, as amended, carry? All those in favour? Opposed? Carried.

Shall sections 207 and 208 of the bill carry? All those in favour? Opposed? Carried.

There's an amendment to section 209.

**Mr Owens:** I move that section 209 of the bill be amended by striking out "the loan is approved by the credit committee, the board and the audit committee" at the end and substituting "the credit committee and the board approve the loan before it is made."

The requirement for the audit committee to approve loans to officers, directors or committee members is deleted with this amendment. Approval of loans is clearly a principal responsibility of the credit committee and, in special circumstances, the board.

**Mr Elston:** Just a question as to how large the credit committee generally is, in a practical sense, and how large the boards often are. I take it the reason is you don't want a small group of people being able to make the loans and you want to expand it to the credit committee plus the board. Is that what's happening here?

**Mr Glower:** No, it's just that the old statute had "supervisory committee." In going through the changes, we replaced "audit committee" for "supervisory committee." But part of the relationship of the supervisory committee in the present statute would have made sense, that it get involved, but it makes absolutely no sense given what the duties of an audit committee are. So we've just taken it out. But the credit committee is normally a minimum of three people. It doesn't otherwise change anything else.

1740

**Mr Kwinter:** Without being vexatious, if that's the word, the syntax of this bill is abominable. I've been gritting my teeth as I keep reading this thing. You need an English teacher to go through this thing. I really think, if the intent is to eliminate the need for the audit committee to do it, the amendment should read, "A credit union may lend to an officer, a member of a committee established under this act or a director an amount in excess of the aggregate of deposits of the officer, member or director only if the credit committee and the board approve the loan," period.

In the first sentence, it says you cannot make the loan unless they approve it. You don't have to say "before it is made"; you've already said that in the first paragraph. I'm just pointing that out. But all the way through there are instances where, as I say, you'd get a failing grade if you were in an English class.

**Mr Owens:** I think Mr Kwinter must moonlight as William Safire in the Sunday New York Times Magazine.

**The Chair:** Any further comments? Shall the amendment carry? All those in favour? Opposed? Carried.

Shall section 209 of the bill, as amended, carry? All those in favour? All those opposed? Carried.

Are there any comments on section 210 of the bill?

**Mr Owens:** Yes. The government will not be supporting this section, and the reason is that section 210 will be deleted because the issue of directors, officers and

committee members or employees guaranteeing or cosigning loans will be addressed in the regulations governing restricted party transactions.

**The Chair:** Shall section 210 of the bill carry? All those in favour? All those opposed? The section is lost.

Shall sections 211 to 223, inclusive, carry? All those in favour? Opposed? Carried.

There are amendments to section 224.

**Mr Owens:** I move that subsection 224(5) of the bill be amended by inserting after "officer" in the first line "or employee."

The reason for this amendment is that it permits authorized employees to inspect members' accounts. Limiting the right of inspection to an authorized officer is impractical because the day-to-day business of the credit union will invariably require employees to have access to such information.

**Mr Elston:** They could authorize the employee anyway, couldn't they? Is it sometimes an oversight? It says "or a person specifically authorized by a resolution of the board." Does it really matter? Couldn't they authorize an employee to do that work anyhow? Who else would be authorized if it wasn't an employee?

**Mr Abols:** You're right. The concept of "person" is a pretty generic one. In respect of those comments on drafting, some of this is a product of drafting by committee and so it gilds the lily, I grant you that.

**Mr Elston:** If there's nobody else, it seems to me then that you should probably take out as well the phrase "or a person specifically authorized by a resolution of the board," unless you can tell me that there is another individual who should be authorized, who might be. Is an auditor an officer? Would he or she have to be able to inspect?

**Mr Kwinter:** Mr Chairman, could I just make a comment before we move on? It would seem to me that where the word "employee" should be substituted is not after "an officer" but where it says or an employee "specifically authorized by a resolution of the board." As my colleague said, if they're going to go outside an officer of the credit union or the employees, that's a real stretch to figure out who is going to be given authority to authorize this thing.

**Mr Owens:** We'll stand this section down, if it's agreeable to the committee.

**The Chair:** The whole of section 224, Mr Owens?

**Mr Owens:** At this point, just the subsection.

**The Chair:** Just subsection 224(5).

We are now dealing with a government motion, subsection 224(6).

**Mr Owens:** I move that section 224 of the bill be amended by adding the following subsection:

"Use of information

"(6) A person authorized to inspect a document under this section shall not use the information in it except in connection with,

"(a) an effort to influence the voting of members or shareholders of the credit union;

“(b) an offer to acquire shares of the credit union; or  
“(c) any other matter relating to the affairs of the credit union.”

The reason for this amendment is that it of course governs the use of any information obtained by a person who has a right to inspect the records of a credit union. It's designed to prevent the trafficking of information with respect to lists of members for purposes that are not related to the affairs of the credit union. Perhaps the word “trafficking” is too strong or has other connotations.

**Mr Elston:** I'm interested in this. It says a person can't use any of the information except in “an effort to influence the voting of members or shareholders.” Can I get an explanation of what that is about?

**Mr Abols:** Essentially, one sort of information they would need is to know who is a member and who is a shareholder of a credit union if they're going to, let's say, move a motion or requisition that a certain order of business be considered at an annual meeting, in order to gauge what kind of support they would have for that motion. In fact, elsewhere in the bill you will see there's a power in the members to requisition a meeting of members if 5% of the membership petitions the board to call a meeting. It's difficult, unless this member has access to the members list, to find out who is a member of the credit union to garner that support. That's one example. The shareholders similarly would have to know who the other shareholders are if they were going to float some proposal that they wanted others to support.

**Mr Elston:** I haven't looked, but is there a definition of what the books are?

**Mr Abols:** Yes. There are requirements elsewhere in the bill that deal with the sort of records a credit union has to keep. In section 232, one of the records is “a register of members and shareholders.”

**Mrs Haslam:** It's in section 224. In subsection 224(2) it says, “and the books, at whatever place they are kept, containing the names of the members.”

**Mr Elston:** Yes, but all I'm saying is that's not all that the books would be comprised of.

**Mrs Haslam:** That's what this refers to, membership.

**Mr Elston:** Yes, but I'm asking about the books, and we're talking about being able to inspect the books. I was just advised that section 232 has a statement about what books are to be kept. It seems to me you could get interesting results from some people being given access, at a vote, to particular information when others don't have it.

**Mr Owens:** If Mr Abols could finish his explanation, it might clarify.

**Mr Elston:** I'm sorry, Mr Abols, we've interrupted.

**Mr Abols:** Section 224 deals with two types of records: personal accounts of a member and then generally the books of a credit union. In terms of content of those books, some of it is captured in section 232 when it speaks to “a register of members and shareholders.” That's one of the records a credit union, by statute, must keep, and the statements as to the names and addresses of members, number of shares held by members or

shareholders and so on. This gives you a flavour of some of the information the act requires that a credit union maintain, and it's those records that invariably would be of interest to anybody who's trying to influence the voting of members or shareholders.

1750

**Mr David Johnson:** Looking at clause (c), one of the exceptions is “any other matter relating to the affairs of the credit union.” That seems somewhat broad. I don't know how serious this is, but doesn't that raise the possibility of a considerably broad range of interpretations? I don't know how one would define “any other matter relating to the affairs of the credit union,” but is that a concern to the government?

**Mr Owens:** It's my understanding, and Mr Abols is certainly free to correct that understanding, that while it may appear semantically to be a broad power, my view is that there would have to be a direct relationship with respect to the affairs of the credit union in terms of how far offside one could go with respect to this (c) section.

**Mr Abols:** I just would make one observation. This section is simply a carry-forward of what's already in the act in terms of accessibility to the accounts. But it speaks to the issue of your concern, whether this is open to abuse, and the practice and experience has been that it isn't. The access to the credit union's records is also governed by the credit union's bylaws, so the members decide what degree of access anybody is going to have to those records. That's another important component that is still there. So it isn't just carte blanche. If the members in their own wisdom believe certain people should have a right to inspect the books of a credit union, that is in the nature of a cooperative and the right of a cooperative to set the ground rules for the way it's going to operate.

**Mr David Johnson:** If a credit union, through its own bylaws, permitted somebody to look at the books, according to clause (c) it would have to be pertaining to the affairs of the credit union, whatever that means.

**Mr Abols:** What it means is that, for example, you can't as a member or a shareholder take information from the credit union—I think the most valuable information is lists of members and shareholders—and then sell it to some company or individual who can in turn solicit these people, to sell other services that have nothing to do with the credit union as a financial institution.

**Mr David Johnson:** If they sold the list, there would be money involved and that would raise money that would be used for the credit union, so would that not be a matter related to the affairs of the credit union? This may not be an issue, but it seems to me that you could twist almost anything around to be a matter related to the affairs of the credit union. In that case, they would be raising revenue for the credit union by selling the list of their members.

**Mr Abols:** I suppose you can make that argument.

**Mr David Johnson:** A devious mind could make that argument.

**Mr Abols:** I would suggest, though, that the intent here is one that would capture that sort of situation. If you're simply selling the list and really have no concern



about how the list is going to be used, this would prohibit that kind of transaction. Nobody's going to pay you money for a list unless they're going to use the list for some sort of purpose, and if the purpose has nothing to do with the credit union as a credit union, this provision would prohibit that kind of sale.

**Mr Elston:** This may be a carry-on of the previous act, but I wonder if we shouldn't stand the whole of 224 down and let it be looked at in its entirety and then come back to it. The way this thing is written under (6), if I am an officer, I can go into anybody's records for any purposes because I am authorized to do that. It says my use of my access to that document, whatever the record might be, is okay if I use it in an effort to influence the voting of members or shareholders of the credit union.

While I know it doesn't intend to allow me to use financial records of my members and of the loans I have outstanding to influence the vote, in effect it says I could do that and be held without responsibility. Maybe we need to clean up the language and do the whole section so that it fits what we want to have happen.

**Mr Owens:** That's agreeable. Let's stand it down and move on.

**The Chair:** Section 224 is stood down.

Shall sections 225 to 231, inclusive, carry? All those in favour? Opposed? Carried.

**Mr Owens:** Is this the point where you move a motion where all the amendments are deemed as read?

**The Chair:** I'm certainly in the hands of the committee members, but as we have to come back next week for clause-by-clause of this bill, and we have done very well so far, and because it's very near the end of the day, could we have an agreement to adjourn the committee to meet Thursday next at 10 am?

**Mr Owens:** With respect to that, if it's possible at all,

we may want to either meet a little earlier or agree not to see the clock at the end of the day or some process like that. I'm concerned with the amount of work we still have to do and the amount of discussion that seems to—

**Mr Elston:** There hasn't been much discussion.

**Mr Owens:** This is not a criticism of—

**Mr David Johnson:** You're just too slow reading the amendments.

**Mr Owens:** That's right. But if the subcommittee could agree—

**Mr Elston:** I actually don't think it's necessary even to worry about this. This bill's going on. We're going to try and make it work. If somebody wants to come in here at 9:30, I'm not really that much opposed to it, if you want an extra half-hour, subject to everybody else being available, but we're not doing badly.

**Mr Owens:** What time did you get here this afternoon?

**Mr Elston:** I had meetings this afternoon.

**Mrs Haslam:** Not to pick on all this wonderful, "Let's get along and get the bill done," but I remind members that some of us were here on time and some of us waited half an hour before this committee could convene. In an extra half-hour, we might have made it through 300 sections.

With all due respect to "Let's meet and let's get it done and we're getting along just fine"—

**Mr Elston:** I apologize for being a House leader.

**Mrs Haslam:** I am picking on anybody who doesn't show up on time to a committee meeting.

**The Chair:** Thank you very much. This committee stands adjourned until 10 am Thursday next.

The committee adjourned at 1757.

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### STANDING COMMITTEE ON FINANCE AND ECONOMIC AFFAIRS

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Prince Edward-Lennox-Hastings-Sud ND)

**\*Vice-Chair / Vice-Président:** Wiseman, Jim (Durham West/-Ouest ND)  
Caplan, Elinor (Oriole L)

**\*Carr, Gary** (Oakville South/-Sud PC)

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**\*Johnson, David** (Don Mills PC)

**\*Kwinter, Monte** (Wilson Heights L)

**\*Lessard, Wayne** (Windsor-Walkerville ND)

Mathysen, Irene (Middlesex ND)

**\*Phillips, Gerry** (Scarborough-Agincourt L)

**\*Sutherland, Kimble** (Oxford ND)

*\*In attendance / présents*

#### **Substitutions present / Membres remplaçants présents:**

Elston, Murray J. (Bruce L) for Mrs Caplan

Owens, Stephen (Scarborough Centre ND) for Mrs Mathysen

#### **Also taking part / Autres participants et participantes:**

Ministry of Finance:

Imants Abols, legal counsel

Glomer, Harvey, manager, financial and business standards, credit unions and cooperatives branch

Owens, Stephen, parliamentary assistant to the minister

**Clerk / Greffière:** Mellor, Lynn

**Staff / Personnel:** Yurkow, Russell, legislative counsel



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## Legislative Assembly of Ontario

Third Session, 35th Parliament

## Assemblée législative de l'Ontario

Troisième session, 35<sup>e</sup> législature

# Official Report of Debates (Hansard)

Thursday 9 June 1994

# Journal des débats (Hansard)

Jeudi 9 juin 1994

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finance and economic affairs**

**Comité permanent des finances  
et des affaires économiques**

**Financial Services Statute Law  
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Chair: Paul R. Johnson  
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## LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON  
FINANCE AND ECONOMIC AFFAIRS

Thursday 9 June 1994

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DES FINANCES  
ET DES AFFAIRES ÉCONOMIQUES

Jeudi 9 juin 1994

The committee met at 1020 in committee room 1.

FINANCIAL SERVICES STATUTE LAW  
REFORM AMENDMENT ACT, 1993LOI DE 1993 PORTANT RÉFORME  
DE DIVERSES LOIS  
RELATIVES AUX SERVICES FINANCIERS

Consideration of Bill 134, An Act to revise the Credit Unions and Caisses Populaires Act and to amend certain other Acts relating to financial services / Projet de loi 134, Loi révisant la Loi sur les caisses populaires et les credit unions et modifiant d'autres lois relatives aux services financiers.

**The Chair (Mr Paul R. Johnson):** The committee will continue with clause-by-clause of Bill 134. I would ask Mr Yurkow, legal counsel, to give us some advice.

**Mr Russell Yurkow:** There was a question on renumbering. Just for clarification, the bill as reprinted and reported out of committee will not be renumbered, but as printed for third reading will be renumbered.

**Mrs Karen Haslam (Perth):** Mr Chair, am I correct to think that we set aside a couple of subsections?

**The Chair:** You just took the words right out of my mouth.

**Mrs Haslam:** I'm not used to doing that. I'm used to having other people talk for me.

**The Chair:** With respect to the subject matter Ms Haslam has just raised, we're going to deal with section 224, which was stood down. Mr Owens.

**Mr Stephen Owens (Scarborough Centre):** The motions that we're going to revisit will be subsections 224(5) and 224(6). On subsection 224(5), it's the view of the government that the motion will stand as is and we will reopen that issue for debate or questions, if any.

On the issue of subsection 224(6), there were points raised by Mr Kwinter with respect to the powers being too broad. Ministry staff have reviewed his concerns as well as the language contained within the subsection. We're proposing that we will withdraw the original subsection 224(6) and replace it with new language which would limit the scope on the use of information.

In terms of process, we'll start with subsection 224(5).

**The Chair:** Any explanation for that, Mr Owens?

**Mr Owens:** The explanation essentially remains the same as it was last week. There's a necessity to have the listed officers and/or employees as persons who can have access to the records. The example that was listed to me by ministry staff, and Mr Abols can expand on this, was that if in the event, for instance, that a credit union was

in the process of taking over a second credit union, there would need to be some level of ability for the receiving credit union to come in and examine records etc.

It's our view that this subsection quite nicely addresses that issue, so the government will stand on its original amendment.

**The Chair:** Mr Abols, any comments on that?

**Mr Imants Abols:** The only point I want to make is on the addition of "employee" as a statutorily recognized person who can have access. The default would be having to go to the board and getting authorization of the board every time a new employee came on board, and that is totally impractical. It's in the nature of an employee's job that they would have to have day-to-day access to the records of a credit union.

**The Chair:** Further comments? Shall subsection 224(5) carry? All in favour? Opposed? Carried.

We go to subsection 224(6).

**Mr Owens:** Just as a question of process, do I then withdraw?

**The Chair:** Yes, you withdraw your original 224(6).

**Mr Owens:** I'd like to withdraw the original subsection 224(6), as proposed, and replace it with the following new subsection 224(6):

I move that section 224 of the bill be amended by adding the following subsection:

"Use of information

"(6) A list of members or shareholders obtained under this section shall not be used by any person except in connection with,

"(a) an effort to influence the voting of members or shareholders of the credit union;

"(b) an offer to acquire shares of the credit union; or

"(c) any other matter relating to the affairs of the credit union."

I'll ask Mr Abols to explain that section.

**Mr Abols:** In the last committee hearing there was some concern expressed about the scope of this provision. Originally it read that no person authorized under the act could use the information except under the circumstances listed in subsection (6). This was modelled on a similar provision in federal legislation. Indeed, in the federal legislation it's much more confined; it's simply confined to the use of membership lists and shareholder lists. So the motion as tabled today reflects that approach. In other words, we're only dealing with what you can do with membership lists and shareholder lists and confining the

use of that information to the items listed in subsection (6).

**The Chair:** Any comments? Seeing none, shall the section carry? All in favour? Opposed? Carried.

We have dealt with our stood-down motions. Now we will continue with the section where we left off, section 232. We have an amendment.

On the advisement of the clerk, is section 224, as amended, is carried. All in favour? Opposed? Carried.

Now if we would continue with section 232 of the bill.

**Mr Owens:** I move that clause 232(2)(d) of the bill be amended by inserting after "person" in the first line "or entity."

**Mrs Haslam:** I'm sorry, Mr Chair. Did you pass 227 to 231? I thought it was just 224.

**The Chair:** Ms Haslam, we carried sections 225 to 231 at a previous meeting.

Explanation, Mr Owens?

**Mr Owens:** This is a technical amendment that addresses the fact that unincorporated bodies may be members of a credit union. The concept known as "entity" captures these unincorporated bodies and the phrase or word "entity" is defined in section 1 of the bill.

**The Chair:** Any comments? Seeing none, shall the amendment carry? All in favour? All opposed? Carried.

Shall section 232, as amended, carry? All in favour? Opposed? Carried.

Section 233.

**Mr Owens:** I move that paragraph 3 of subsection 233(1) of the bill be amended by inserting after "board" in the second line "executive committee."

This amendment addresses a technical oversight in that the register should also provide for a list of the members of the executive committee.

**The Chair:** Any comments? Seeing none, shall the motion carry? All in favour? Opposed? Carried.

Shall section 233, as amended, carry? All in favour? Opposed? Carried.

Shall sections 234 and 235 carry? All in favour? Opposed? Carried.

Section 236 has an amendment.

**Mr Owens:** I move that subsection 236(8) be struck out.

I'll ask Mr Abols for a quick explanation.

**Mr Abols:** Subsection 236(8), as it appears in the bill, was meant to clarify that the appeal provisions in section 238 do not apply to orders that a director may make under another section of the act. But apparently there are several other areas where the director may make orders that are not captured in the list, so it raises the question or begs the question, what are the appeal mechanisms for those sections?

Our view is that those sections stand on their own. Since it doesn't clarify issues but confuses issues, the recommendation is that the motion should be withdrawn.

1030

**The Chair:** Any comments? Seeing none, shall the

motion carry? All in favour? Opposed? Carried.

Shall section 236 carry? All in favour? Opposed? Carried.

Section 237 has amendments.

**Mr Owens:** I move that subsections 237(1) to (4) of the bill be struck out and the following substituted:

"Order without a hearing

"237(1) The director may make an order under section 236 without first giving notice and holding a hearing if he or she is of the opinion that the interests of the members, depositors or shareholders of the credit union may be prejudiced or adversely affected by a delay in issuing an order.

"Effective date

"(2) An order made under subsection (1) comes into effect when it is made.

"Request for hearing

"(3) Any person, by written notice served on the director within fifteen days after receiving an order made under subsection (1), may ask for a hearing before the director."

What this amendment does is that it integrates procedures in section 237 with the procedures and grounds set out in section 236. As section 237 appears in our bill, the director does not require any grounds before making an order under subsection 237(2). It's our view that the director may only make the order if any of the grounds enumerated in subsection 236(1) exist.

**Mr Murray J. Elston (Bruce):** I haven't quite gotten into the swing of this yet, so it may be something that is apparent with a little more study. It says an order made under subsection (1) comes into effect when it is made. In many cases you have situations where orders are set aside until there has been an appeal period that has lapsed or any of those other things. Is there any inconsistency that we should be concerned about having immediate effect? In other words, if the director makes an order, whatever he/she says is it. I presume if there's an appeal mechanism that would stay the order.

**Mr Abols:** No. It is consistent with the purpose of 237. Section 237 is an emergency sort of provision whereby the director can immediately issue an order and ensure that order does operate. Section 236 is the normal situation where there's a proposal to make an order and then there's a right to make representations and have a hearing, so given the nature of the order as an emergency order, it's not inconsistent with it.

There is a provision later on in 237 to request a hearing after the fact, and then the superintendent has the discretion to either have the order continue while listening to the appeal or have the order continue pending the outcome of the appeal.

**Mr Elston:** Presumably there could be some kind of a judicial review as well instigated in the meantime at the behest of somebody who thinks that the director has overstepped his or her bounds?

**Mr Abols:** There could very well be, yes.

**Mr Elston:** Because this will be subject to that. The decision having been taken would be subject still to



judicial review. So there are remedies that continue to exist outside the act as well?

**Mr Abols:** Yes.

**The Chair:** Further comments? Seeing none, shall the motion carry? All in favour? Opposed? Carried.

An additional amendment to 237.

**Mr Owens:** I move that subsection 237(7) of the bill be amended by inserting after "union" in the third line "to the deposit insurer."

This amendment simply allows the deposit insurer to be informed of circumstances that may or may not lead to a windup and a call on the deposit insurer. It's our view that the deposit insurer should have notification as soon as possible.

**Mr Monte Kwinter (Wilson Heights):** The form of the drafting of it makes no sense. If you read it literally, it says that after the word "union," you are to add the words, "to the deposit insurer". So the sentence would read: "A copy of an order made under this section"—section 236—"shall be sent to each director of the affected union to the deposit insurer and to"—is that supposed to be "and to the deposit insurer and to the stabilization authority of the credit union"?

**Mr Yurkow:** Perhaps I can address that. Editorially, there'll be a comma after "credit union." It isn't in the draft, but the editors will put the comma in.

**The Chair:** Shall the motion carry? All in favour? Opposed? Carried.

Shall section 237, as amended, carry? All in favour? Opposed? Carried.

Shall sections 238 through 244, inclusive, carry? All in favour? Opposed? Carried.

Section 245 has an amendment.

**Mr Elston:** I move that section 245 of the bill be amended by adding the following subsection:

"Same

"(3) Nothing in this act shall be construed so as to make the corporation responsible for leagues."

This was an amendment that was brought to our attention in one of the presentations and we had adopted that as an item that would maybe clarify exactly where it's going. One of the problems in our committee hearings is that we don't generally have the time to reflect on some of the details. This amendment is really designed to turn our attention to some of the issues that we didn't get around to talking with the proponents about. Perhaps if I could hear the response from the parliamentary assistant or the ministry, it would be helpful.

**Mr Owens:** Thank you for your amendment. Unfortunately, we will not be supporting the amendment. The reason for this is that there is an authority within the bill for the Lieutenant Governor to exempt leagues from this bill. It's our view that we don't particularly want to start with a minimalist position and have to work up to a more fulsome position: that it's better to be able to work back.

**Mr Elston:** So you're going to do it anyway, except it's going to be by regulation.

**Mr Owens:** Well, I wouldn't say that.

**Mr Elston:** But your presentation would lead one to believe that you were going to accomplish it through the regulations. So you're not going to support this.

**Mr Owens:** The enabling ability is in the—

**Mr Elston:** I know. Just to be clear, though, the ability exists, but you have no intention of passing the regulation at this point. Is that right? So you are not only not going to support this, but you are not going to do it through regs?

**Mr Abols:** No, that's not entirely true. First of all, I think it's important to point out that the section as it appears in the bill really carries forward what is already in the act. The act now is an act of general application, applies to leagues, which are defined to be credit unions, so all provisions of the act apply to the leagues except those provisions the Lieutenant Governor in Council identifies in a regulation as not applying to leagues.

There is a regulation in effect. Preliminary review of that regulation suggests that most of those provisions will probably be carried forward in a new regulation, and we are currently going through the act to see what other provisions should be exempted or should not apply to leagues as well. At this point it's difficult to say to what extent, but the regulatory authority is there, has been used in the past and presumably will be used in the future.

**The Chair:** Any further comments? Shall the motion carry? All in favour? Opposed? The motion is lost.

Shall section 245 carry? All in favour? Opposed? Carried.

Section 246 has an amendment.

**Mr Owens:** I move that section 246 of the bill be amended by striking out "inconsistent with" in the next-last line and substituting "prohibited or restricted by."

The reason for this amendment is that it more clearly focuses the extent to which provincial legislation may override federal legislation governing leagues. What this will do is that a league may not accept or exercise any power, right or privilege conferred under federal legislation if that power or right would be prohibited or restricted by a provision in the act or in the regulations.

1040

**The Chair:** Any comments? Seeing none, shall the motion carry? All in favour? Opposed? Carried.

Shall section 246, as amended, carry? All in favour? Opposed? Carried.

Shall section 247 carry? All in favour?

*Interjection.*

**The Chair:** No, it's not an amendment; it's a new section.

Shall section 247 carry? All in favour? Opposed? Carried.

We have a government motion, new section 247.1.

**Mr Owens:** I move that the bill be amended by adding the following section:

"Members

"247.1 Subject to the prescribed terms, credit unions and other prescribed entities may be members of a league."

This section simply is an enabling section that establishes the principle that credit unions may become members of a league and also provides the enabling authority for regulations which would permit other entities to become members of a league.

**Mr Kwinter:** Again, just in the matter of drafting, it would seem to me that it should be redrafted so that this comes first. It should be 247 and what is now 247 should be 247.1. This gives you the ability to be a member of a league; 247 tells you how to do it. What you're really saying is, 247, here's how you do it, and then 247.1 says you can do it. I think it just should be the reverse.

**Mr Abols:** The order of this is really in the discretion of leg counsel. I'm not sure whether this could be changed through an—

**Mr Elston:** The parliamentary assistant was right all along.

**Mr Yurkow:** I don't quarrel with what Mr Kwinter is saying. I don't know whether there is a whole lot of thought as to whether it went before or after.

**Mr Abols:** I don't think it affects the substance or the operation of the provision. The optics of it may not look very good but at this point—

**Mr Kwinter:** All I'm talking about is the optics. I'm saying that under normal circumstances when you look at the legislation, the first part of the clause tells you what you can do and the second part tells you how to accomplish it. This way it says, "Here's how you accomplish it," and the second part says, "You can do it." It's just a matter of reversing it. I'm not suggesting any changes other than putting it in its proper sequence.

**Mr Elston:** I move that we exchange order and move 247.1, as it currently exists, to be 247, and 247, as it now appears, to be 247.1.

**The Chair:** Mr Elston has made a motion. All in favour? Opposed? Carried. The order of section 247 and 247.1 will be reversed.

**Mr Elston:** This is the only amendment I've won.

**The Chair:** Shall section 247.1 carry? All in favour? Opposed? Carried.

Shall section 248 carry? All in favour? Opposed? Carried.

Section 249 has an amendment.

**Mr Owens:** I move that the French version of clause 249(2)(d) of the bill be amended by striking out "surveillance" in the first line and substituting "supervision."

**The Chair:** Any comment? Seeing none, shall the motion carry? All in favour? Opposed? Carried.

Shall section 249, as amended, carry? All in favour? Opposed? Carried.

We have a government motion amending the title.

**Mr Owens:** I move that the heading to part XIV be struck out and the following substituted:

"Deposit Insurance Corporation of Ontario."

This is a consequential amendment that flows from subsection 250(1).

**The Chair:** Any comments? Seeing none, shall the motion carry? All in favour? Opposed? Carried.

Section 250 has an amendment.

**Mr Owens:** I move that subsection 250(1) of the bill be amended by striking out the last four lines and substituting "the Deposit Insurance Corporation of Ontario and, in French, Société ontarienne d'assurance-dépôts."

**The Chair:** Any comments? Shall the motion carry? All in favour? Opposed? Carried.

Shall section 250, as amended, carry? All in favour? Opposed? Carried.

Shall sections 251 to 257, inclusive, carry? All in favour? Opposed? Carried.

Section 258 has amendments.

**Mr Owens:** I move that subsection 258(3) of the bill be renumbered as section 258.1 and that subsection 258(4) of the bill be renumbered as section 258.2.

This amendment is designed to separate out subsection 258(3) so that the superintendent's power to obtain information from the deposit insurer is not confined to a request within the context of the annual examination of the deposit insurer's affairs. I guess with the renumbering of legislative counsel, it will go on that this section will be subsequently renumbered as well. Is that correct?

**Mr Yurkow:** Yes, when the bill goes for third reading, it will all be a renumbered version.

**The Chair:** Any comments? Shall the motion carry? All in favour? Opposed? Carried.

Shall section 258, as amended, carry? All in favour? Opposed? Carried.

Shall section 259 of the bill carry? All in favour? Opposed? Carried.

Section 260 has amendments.

**Mr Owens:** I move that clause 260(e) of the bill be amended by inserting after "credit union" in the third line "under administration."

This amendment limits the deposit insurer's ability to grant financial assistance to credit unions. It can only do so when a credit union is under its administration.

**The Chair:** Any comments? Seeing none, shall the motion carry? All in favour? Opposed? Carried.

There's a Liberal amendment.

**Mr Elston:** I think this is maybe to the same extent as before; at least the discussion may very well be. This just says, "The objects of the corporation do not extend to having control over, management of, direction over or responsibility for leagues" as an added subsection (2). We probably talked a little about this before, so I withdraw.

**The Chair:** Shall section 260, as amended, carry? All in favour? Opposed? Carried.

Section 261 has some amendments.

**Mr Owens:** I move that clause 261(1)(a) of the bill be amended by striking out "and" at the end of subclause (i) and by adding the following subclauses:

"(iii) financial assistance to credit unions, and

"(iv) the payment of a stabilization authority's administrative costs."

The reason for this amendment is that it identifies the



deposit insurance reserve fund as the deposit insurer's source of funds in providing financial assistance to a credit union or a stabilization authority. The deposit insurance reserve fund is maintained through the annual deposit insurance premium levied on member credit unions.

**Mr Kwinter:** What section were you just talking about right now?

**The Chair:** Clause 261(1)(a).

**Mr Kwinter:** I had a comment on 260, but you've already passed it. I'd just like to make a comment, if I can have the committee's indulgence.

Although it's implied, if you know what you're talking about, about the stabilization authority, under the provision that was just changed, where you say the "credit union under administration," under the objects of the corporation it does not in any way identify the ability to put a credit union under administration.

If you're really looking at the objects, there should be some provision that says one of the objects is that in the case of a problem they can in fact put a credit union under administration. When you talk about it, you say, "Here are things you can do if it is under administration." But there's really no provision in the objects. There's a provision to provide for a stabilization authority, but there's no provision to put it under administration.

1050

**Mr Abols:** There is in clause (j), "act as an administrator of a credit union." That's what it's doing when it has a credit union under administration.

**The Chair:** Mr Owens, you gave your explanation for 261(1)(a). Any comments? Seeing none, shall the motion carry? All in favour? Opposed? Carried.

A further amendment to 261.

**Mr Owens:** I move that clause 261(1)(b) of the bill be amended by inserting after "credit unions" in the second line "under administration."

The reason for this is that the amendment limits the ability of the deposit insurer to provide financial assistance to a credit union and it may only do so when it's under administration.

**The Chair:** Any comments? Seeing none, shall the motion carry? All in favour? Opposed? Carried.

A further amendment to 261.

**Mr Owens:** I move that subsection 261(1) of the bill be amended by adding the following clause:

"(o.1) appoint an agent."

The reason for this is the amendment adds to the list of the deposit insurer's ancillary powers the ability to appoint an agent, and much of the deposit insurer's activity as a deposit insurer and stabilization authority will be carried out through agents.

**The Chair:** Any comments? Seeing none, shall the motion carry? All in favour? Opposed? Carried.

Shall section 261, as amended, carry? All in favour? Opposed? Carried.

Shall sections 262, 263 and 264 carry? All in favour? Opposed? Carried.

Section 265 has an amendment.

**Mr Owens:** I move that section 265 of the bill be amended by adding the following subsections:

"Same

"(1.1) A league may, by written or oral representations, advertise or hold out its members as being insured or approved for deposit insurance by the corporation if they are members of the corporation."

This will enable the leagues to advertise or represent that their members are insured by the deposit insurer.

**The Chair:** Any comments? Seeing none, shall the motion carry? All in favour? Opposed? Carried.

Shall section 265, as amended, carry? All in favour? Opposed? Carried.

Section 266 has an amendment.

**Mr Owens:** I move that section 266 of the bill be amended by adding the following subsection:

"Same

"(1.1) Subject to subsection (2), no league shall advertise or hold out, by written or oral representations, that its members are insured by the corporation."

Again, with respect to this issue, it enables the deposit insurer to authorize materials and prohibits leagues from advertising that they are covered by the deposit insurer without prior authorization of those said materials.

**The Chair:** Any comments? Seeing none, shall the motion carry? All in favour? Opposed? Carried.

Shall section 266, as amended, carry? All in favour? Opposed? Carried.

Shall sections 267 and 268 carry? All in favour? Opposed? Carried.

Section 269 has amendments.

**Mr Owens:** I've been advised by ministry staff that we would like to stand down this section as there's still some drafting work going on.

**Mrs Haslam:** All of 269?

**The Chair:** Is that all of 269 or sections of 269?

**Mr Owens:** I can do 269(2). We're standing down 269(4.1) and 269(5). We'll just go through these.

I move that subsection 269(2) of the bill be amended by striking out "or" at the end of clause (c), by adding "or" at the end of clause (d) and by adding the following clause:

"(e) the administrator orders that the credit union be wound up under subparagraph iii of paragraph 6 of subsection 294(1)."

The reason for this is that it adds another event that would trigger the deposit insurer's obligation to make a payment in respect of a deposit; namely, if the credit union is ordered by the administrator to be wound up.

**The Chair:** Any comments? Seeing none, shall the motion carry? All in favour? Opposed? Carried.

**Mr Owens:** Subsection 269(4.1) we'll stand down until this afternoon.

**The Chair:** Do we have an agreement to stand down subsection 269(4.1)? All in agreement? Agreed.

Subsection 269(5).

**Mr Owens:** I move that subsection 269(5) of the bill be amended by striking out "the prescribed rate" in the third line and substituting "the rate established by its bylaws."

The effect of this amendment is that the rate of interest that the deposit insurer must pay on any deposit will be established by the deposit insurer's bylaws.

**The Chair:** Any comments? Seeing none, shall the motion carry? All in favour? All opposed? Carried.

We will have to then deal with section 269, as amended—

**Mr Owens:** Subsection 269(7).

**The Chair:** Subsection 269(7), sorry.

**Mr Owens:** I'm just getting a clarification on this as to whether we'll have to stand it down because it's a consequential amendment to the one that we stood down.

**Mr Elston:** Just while you're talking, can I ask a question? The corporation is basically going to insure all deposits except deposits "not payable in Canada or in Canadian currency." That's clause 1(a). What type of a deposit is that? What are we talking about here? What type of a transaction? They hold all of their deposits here, but it's not payable here. I just want to know what it is. It's the curious nature of my mind here. I'd like to understand what an item this is.

**The Chair:** Mr Glower, did you wish to answer that question?

**Mr Elston:** Just in case I want to move all my Ontario funds to the Caymans or something. Mr Glower is searching his pocketbook to see if he's got one of these statements.

**Mr Abols:** I'll talk off the top of my head, which is always a dangerous thing to do, I know. First of all, it addresses the fact that the deposit insurer is insuring community-based financial institutions. So the moneys would normally be payable because there are no branch operations or credit unions outside of Ontario, at least none that we know of, and there shouldn't be.

**Mr Elston:** And if you find out about them, there won't be.

**Mr Abols:** And there won't be. With respect to the ones that are not payable in Canadian currency, again there's been some problem with—I'm not sure whether this is the same rule that applies with respect to the federal deposit insurer, but it really simply means that your accounts have to be denominated in Canadian currency; you can't have a US money market account of some sort, or you can have it, but it won't be covered by deposit insurance.

**Mr Elston:** So this would be a position that would impair in some ways credit unions in competition with the banks, which obviously—I don't happen to have one, but I know lots of people have a US currency account in a Canadian bank.

**Mr Jim Wiseman (Durham West):** Are they insured, though?

**Mr Elston:** It's not insured either?

**Mr Wiseman:** I don't know. I'm asking.

**Mr Elston:** I don't know. It just seems to me that if the account is held there, the fact that you have to convert it into another currency—I just want to understand that it means it is no longer insured, because there are certainly people—

**Mr Wiseman:** I have a voice here is saying it's not insured.

**Mr Elston:** But people probably don't understand that. Basically if you have an account in a bank or any place, any kind of an account, you figure it's all going to be insured. So if this is the same, then it's fine, but I think we have to make sure people are alerted to the fact then that their non-Canadian currency accounts in Canadian institutions which advertise "CIDC insured" or now "DICO insured" are going to be well aware that their accounts are uninsured in other currencies.

**Mr Wiseman:** I think you're—

**Mr Elston:** The signs on the front of our financial institutions, or lots of them anyway, deposit takers say, "We are insured" or "Not insured," and "We are insured" is the sign that usually lures people into a feeling of security about their deposits.

1100

**The Chair:** I think it's important that we continue with our amendments. Is there any very short, further comment with regard to what Mr Elston has said?

**Mr Elston:** I just want to know what this is before we go on to something else.

**The Chair:** Sure. Mr Glower.

**Mr Harvey Glower:** On the signage, if you will, the sticker on the door, essentially what would be done is for any non-denominated-in-Canadian-dollars account, ie a US dollar account, that would have to be authorized by the member's signature acknowledging that there is no deposit insurance coverage on that account, and that's something we would intend to do.

On deposits not payable in Canada, it's just a catch-all to ensure really that unless the deposit is in the credit union in Ontario, it is not otherwise insured. For example, if somebody would attempt to open up an account and deposit US cheques that they're getting from their grandmother in New York City in the credit union, until that cheque is in fact converted into Canadian dollars and deposited in the credit union in Canadian dollars, it is not insured, period, end of story. So whether in transit or otherwise, it must be payable in Canada and must be in Canadian dollars.

**Mr Kwinter:** I must be missing something in this clause, because if you read clause 269(1), it says:

"The corporation shall insure each deposit with a credit union except,

"(a) a deposit that is not payable in Canada"—which I understand, and then it goes on to say—"or in Canadian currency."

So what they're saying is that they can't insure it if it's not payable in Canada or if it's in Canadian currency. Could you explain that to me? I would think it should say "in non-Canadian currency."

**Mr Yurkow:** Not Canadian currency. The question is



whether there should be a second negative there, a deposit that is not in Canadian.

**Mr Kwinter:** This is a prohibition of insuring against deposits that are in Canadian currency.

**The Chair:** Is this a prohibition? Is that what you're suggesting?

**Mr Kwinter:** I just want an explanation. It doesn't make any sense.

**The Chair:** It may very well be. Mr Yurkow?

**Mr Yurkow:** I would read that as "not payable in Canada or not in Canadian currency," but if there is some confusion, you might add the second "not."

**Mr Kwinter:** Or non-Canadian currency?

**Mr Yurkow:** Yes. I would read it that the "not" applies to both, but certainly if there's some confusion—

**The Chair:** We want to have the language accurate.

**Mr Owens:** Monte can do it. Do you want to move an amendment?

**Mr Kwinter:** Yes. I would like to move that we amend clause 269(1)(a) to say, "A deposit that is not payable in Canada or in non-Canadian currency."

**The Chair:** Has everyone heard the motion? All those in favour of Mr Kwinter's motion? Opposed? Carried.

Thank you, Mr Kwinter, for bringing that to the committee's attention. It certainly shows that indeed Mr Kwinter has perused the bill to its absolute.

This brings us to subsection 269(7) of the bill.

**Mr Owens:** I move that subsection 269(7) of the bill be struck out.

This is a consequential amendment. The option of having a deposit transferred to another credit union is addressed in the amendment to subsection 269(4.1), which will be dealt with this afternoon.

**Mr Elston:** May I just ask a question? The drafting around the newly intended subsection (4.1) will take care of this item? As long as we have some assurance of that—I don't want to have to go back.

**Mr Owens:** No, no. We're trying to de-escalate or clear up some of the issues, and it's a drafting issue that we're looking at.

**The Chair:** I can expect then that we will deal with section 269 in its completeness this afternoon. That will bring us then to—

**Mr Elston:** Are we going to vote on subsection (7) first?

**The Chair:** Okay.

**Mr Owens:** I move that subsection 269(7) of the bill be struck out. I guess I've already explained it.

**The Chair:** Shall the motion carry? All in favour? Opposed? Carried.

As I said, we will deal with section 269, as amended, this afternoon.

Shall sections 270, 271 and 272 carry?

All in favour? Opposed? Carried.

Section 273 has amendments. Mr Owens.

**Mr Owens:** I move that clause 273(1)(c) of the bill

be amended by inserting after "corporation" in the second line "or another person."

The effect of this amendment is that the appointment of any liquidator of a credit union, in addition to the deposit insurer, may trigger the cancellation of the credit union's deposit insurance. I'll ask Mr Abols to explain that.

**Mr Abols:** There are situations where persons other than the deposit insurer could be appointed as liquidator. For example, in the context of a voluntary windup of a credit union, the credit union may appoint its own liquidator, or in the case of a court-ordered dissolution of a credit union, the court may appoint someone else as the liquidator of the credit union.

**The Chair:** Any questions or comments? Seeing none, shall the motion carry? All in favour? Opposed? Carried.

Further amendment? Mr Owens.

**Mr Owens:** I move that subsection 273(5) of the bill be amended by inserting after "director" in the first and second lines "the league for the credit union."

This amendment obliges the deposit insurer to notify a credit union's league of any cancellation of the credit union's deposit insurance.

**The Chair:** Any comments and/or questions? Seeing none, shall the motion carry? All in favour? Opposed? Carried.

Shall section 273, as amended, carry? All in favour? Opposed? Carried.

Section 274 has amendments. Mr Owens.

**Mr Owens:** I move that subsections 274(2) to (5) of the bill be struck out and the following substituted:

"Assessment for the fund

"(2) For the purpose of establishing and maintaining the funds, a stabilization authority may, subject to the prescribed conditions, assess member credit unions in the amounts and at the times and frequency set out in the stabilization authority's bylaws.

"Bylaws approved

"(3) Bylaws to which this section applies are subject to the approval of the director.

"Transition

"(4) Stabilization funds established under a predecessor of this act will be maintained as prescribed."

Mr Abols, if you could explain that.

**Mr Abols:** The change in subsection 274(2) simply moves the governing authority for stabilization funds from regulation to the stabilization authority's bylaws.

Subsection 274(3), though, ensures that there's some regulatory oversight in that these bylaws have to be submitted to and approved by the director of credit unions.

Then subsection 274(4) deals with the fact that today, under the current act, we have a few stabilization funds still in existence with funds under administration. Those were set up for specific purposes, and therefore we want to just grandfather those and carry them through in this bill.

**Mr Elston:** Can I just understand what the prescribed conditions might be? I take it as a result of this there are a whole series of regulations that restrict the movement of the deposit insurer under this section?

**Mr Abols:** Not only the deposit insurer, but any group of credit unions that have applied to become a stabilization authority.

**Mr Elston:** Okay.

**Mr Abols:** Those prescribed conditions, the basic one would be the rate at which the assessments will be levied. Perhaps they may be based on a certain experience profile. If it's a credit union that's been under supervision a number of times, it may have a higher assessment rate.

The regulations have not yet been developed, and these regulations are going to have to be worked on in concert with representatives of the credit union movement and the deposit insurer.

**Mr Elston:** Is there any merit to freeing up the organizations themselves to develop these rules as opposed to having the programs enshrined in regulation?

**Mr Abols:** There is, because they're going to be principally responsible for administering this program, and the sector has different experience. The francophone credit unions may want to approach stabilization in a different way; the members of Credit Union Central of Ontario may have different views on how stabilization should be done. So this allows for a program that's tailored to the perspectives and needs of different segments in the movement.

**Mr Elston:** What I'm just saying here is that "subject to the prescribed conditions" really means that at the end of the day the management, or at least the ultimate authority for all their activities, is going to be restricted or could be limited by whatever the Lieutenant Governor in Council may set out. When I see "prescribed," I always think of regulations, ie, as in under the act.

**Mr Abols:** That's right. There'll be basic framework and basic de minimis requirements that one would expect to see applied to all stabilization authorities, and those would be Lieutenant Governor in Council regulations.

1110

**Mr Elston:** So although there is some flexibility, the organizations themselves will have to basically get by with a skeletal framework type program.

**Mr Abols:** That's right.

**Mr Elston:** They are going to be, then, fairly flexibly able to delineate their own courses of action under this.

**Mr Abols:** That's right.

**The Chair:** Any further comments? Seeing none, shall the motion carry? All in favour? Opposed? Carried.

Shall section 274, as amended, carry? All in favour? Opposed? Carried.

Section 275 has a government amendment and a Progressive Conservative amendment. Mr Owens first.

**Mr Owens:** I move that subsection 275(5) of the bill be struck out and the following substituted:

"Limitation

"(5) For the purposes of clause (4)(a), prescribed

classes of credit unions shall be based in part on measurable criteria which relate to the risk posed by the credit union and may be based in part on other factors so long as they are not based on membership in a league or stabilization authority."

What this amendment requires is that any regulation which prescribes a differential insurance premium be based partly on criteria related to the risk posed by an individual credit union, and it maintains the already existing prohibition against basing a differential premium on membership in a league or a stabilization authority.

**The Chair:** Any comments? Seeing none, shall the motion carry? All in favour? Opposed? Carried.

Mr Carr for the PC motion.

**Mr Gary Carr (Oakville South):** There's a PC motion Mr Johnson was interested in. I'll move it in his absence. During the discussion, I believe there was some discussion of whether the coalition still wants it, but I'll move it anyway.

I move that section 275 of the bill be amended by adding the following subsection:

"(6) The Lieutenant Governor in Council may authorize the Minister of Finance to advance, out of any unappropriated moneys in the consolidated revenue fund, amounts to the corporation by way of loan on such terms and conditions as the Lieutenant Governor in Council may determine."

I understand this was one of the amendments proposed by the Coalition of Credit Unions and Caisses Populaires of Ontario. There was some discussion, I think, last week of whether that was going to be dealt with. I don't know if the parliamentary assistant did want to speak to this and what his feelings were, but in essence the intent is to level the playing field between the CDIC and the OSDIC and, by extension, between the different deposit-taking institutions that they stand behind.

That was the intent, but I understand there may be some need for this not to be passed. So I would turn to the parliamentary assistant.

**The Chair:** If I can intervene here, Mr Carr, and just let you know that the motion is out of order, and that's because only a minister can move this. I just thought I'd bring that to the attention of yourself and members of the committee.

**Mr Carr:** I wonder if the parliamentary assistant could just speak to it, then, either way.

**Mr Owens:** Mr Carr, you're right that we did deal with this issue in some level of detail last week. It's the position of the government that we can't support this amendment. It's our view that the stabilization authorities that have been established are sufficient and that linking the consolidated revenue fund to that particular process is not agreeable to us.

**The Chair:** Well, it's out of order, so we can't proceed.

**Mr Carr:** I appreciate the comments anyway of the parliamentary assistant.

**Mr Elston:** May I have a reason for your ruling, please?



**The Chair:** The reason is that only a minister can authorize the expenditure of moneys from the consolidated revenue fund.

**Mr Elston:** No, no. This doesn't authorize any expenditure; it just says the cabinet can make a determination on expenditure. This is only an authorization to the cabinet to authorize the Finance minister to do something. This isn't actually making an expenditure itself; it gives the power or the authority to the executive council.

I think the issue is one that is in order, because the determination is not made here by an opposition person or a backbench individual, but it says cabinet shall decide if an expenditure is to be undertaken by the Finance minister. In that sense, I think the amendment is in order. The question of whether it's to be supported by the people here is another matter.

**Mr Owens:** That is always a substantive question.

**Mr Elston:** It is substantive, but I just don't want to get into the habit of not being able to move any amendments that authorize decisions to be taken on financial matters by the cabinet.

**The Chair:** I appreciate your comments, Mr Elston. It's been brought to my attention that the reason is because it's unappropriated moneys taken out of the consolidated revenue fund. I heard your comments, Mr Elston. However, if the motion is out of order, then it cannot proceed. That's the way it is, as they say. Certainly, if it's out of order, then we can't proceed with it.

That's the ruling from the Chair and we will proceed to section 275, as amended. All those in favour? Opposed? Carried.

Shall sections 276 to 279, inclusive, carry? All in favour? Opposed? Carried.

Section 280 has an amendment. Mr Owens.

**Mr Owens:** I move that section 280 of the bill be amended by adding the following subsection:

"Exception

"(3) Despite subsections (1) and (2), the corporation may require a report limited to matters identified by the corporation."

The reason for this amendment is that due to the cost and time involved in preparing an examination, subsection 280(3) gives a deposit insurer the option of limiting the scope of the annual report to matters identified by the corporation.

**The Chair:** Any comments? Seeing none, shall the motion carry? All in favour? Opposed? Carried.

Shall section 280, as amended, carry? All in favour? Opposed? Carried.

Section 281 has an amendment. Mr Owens.

**Mr Owens:** I move that section 281 of the bill be amended by adding the following subsection:

"Stabilization authority for credit unions

"281(0.1) The corporation is the stabilization authority for all credit unions governed by this act except those for which a stabilization authority is designated."

This is a new subsection that clarifies the deposit insurer as stabilization authority for all credit unions until

the deposit insurer designates a league or an association of credit unions as a stabilization authority for a particular group of credit unions.

**The Chair:** Any comments? Seeing none, shall the motion carry? All in favour? Opposed? Carried.

Shall section 281, as amended, carry? All in favour? Opposed? Carried.

Section 282 has amendments. Mr Owens.

**Mr Owens:** I move that the French version of clause 282(2)(a) of the bill be amended by striking out "surveillées" in the first and second lines and substituting "supervisées."

**The Chair:** Any comments? Seeing none, shall the motion carry? All in favour? Opposed? Carried.

An additional amendment, Mr Owens.

**Mr Owens:** I move that subsection 282(4) of the bill be amended by adding at the end "or any limitations on their powers as a stabilization authority."

This amendment clarifies that a league or an association of credit unions may appeal not only a refusal to be designated as a stabilization authority but any limitation imposed on its power where it has been designated as a stabilization authority.

**The Chair:** Any comments?

**Mr Kwinter:** That one was 282(4)?

**The Chair:** Yes.

**Mr Kwinter:** The reason I was a little late—again, I hate to keep harping on these things, but it doesn't make any sense in the drafting of it. I understand the intent, but if you read 282(4), it says, "A league or association of credit unions may, within fifteen days after receiving the corporation's reasons, appeal to the minister the corporation's decision not to designate it or any limitations on their powers as a stabilization authority."

1120

Is it really saying that you appeal to have them not designated on the limitations or the powers as a stabilization authority? It just doesn't read properly.

**Mr Abols:** No. There are two issues here. One is, do you become the stabilization authority or don't you? We have that already in the bill. The other issue is, the deposit insurer, in designating a particular league or association as a stabilization authority, may say, "Yes, you are the stabilization authority but these are your powers and these are the restrictions and limitations on your powers." The applicant may not like those restrictions or have a different view as to whether they're appropriate, and so on that issue alone it could also appeal to the superintendent to determine whether those restrictions or limitations should apply. So there are two grounds of appeal here.

**Mr Kwinter:** What you're saying is they can appeal to the minister "not to designate it or any limitations on their powers." I mean, how do you designate limitations on their powers as a stabilization authority? I can see you designating an entity as a stabilization authority, but how do you designate limiting of someone's powers as a stabilization authority?

**Mr Abols:** It's not the designating of the limitations that's at issue.

**Mr Kwinter:** But that's my concern, because when you read it, it says, "A league or association of credit unions may, within fifteen days after receiving the corporation's reasons, appeal to the minister the corporation's decision not to designate it or any limitations on their powers as a stabilization authority." It doesn't make any sense.

**Mr Abols:** It does if you read it in context of the entire section, and if you go back to subsection 282(2), which you would have read before you got to subsection (4), you would see that it can also, in designating a credit union, identify who it supervises and specify limitations, if any, on its powers. It's clearly identified as a decision by the deposit insurer that these limitations or restrictions are imposed by the deposit insurer—

**Mr Kwinter:** I have no problem with that; that's already covered. All I'm saying is, how do you designate the limitations on someone's powers as a stabilization authority?

**Mr Abols:** I wouldn't read it that way, but if there's a better drafting solution, I would perhaps defer to legislative counsel on this.

**Mr Yurkow:** I read this as an appeal to the minister, one, of the corporation's decision not to designate it, or an appeal to the minister of any limitations on their power. There are two grounds of appeal: One is the decision not to designate; the second is any limitation on their power. That is the way I read that.

**Mr Abols:** I'm sorry, where did we leave off?

**The Chair:** Mr Yurkow gave an explanation.

**Mr Abols:** Supporting, I assume, our interpretation.

**Mr Yurkow:** Yes.

**Mr Abols:** I defer to legislative counsel, the wordsmith in this area. I wouldn't read it the way you read it, Mr Kwinter.

**Mr Kwinter:** You wouldn't?

**Mr Abols:** I wouldn't, no. I don't see designating—the verb ends with one subject matter and the other subject matter is the limitations.

**Mr Kwinter:** If you read the final part, as amended, it says, "not to designate it or any limitations on their powers as a stabilization authority." In clause 282(2)(b), where you talk about the limitations, I have no problem with that. I have a problem where you're designating its limitations as a stabilization authority. I would suggest that it should be just, at the end—there's no reason to amend it to include a limitation on their powers as a stabilization authority.

**Mr Yurkow:** If I may make a suggestion, if it makes it any clearer: if after "minister" we put an "(a)," so that, "appeals to the minister (a) the corporation's decision not to designate it, or (b) any limitation on their powers," etc, to make it clear that it's the appeal to the minister and there are two grounds for the appeal. I'm not sure if that would clear up the confusion.

**The Chair:** Does that help, Mr Kwinter?

**Mr Kwinter:** It helps somewhat, yes.

**Mr Glower:** Then it's like 2(a) and (b).

**Mr Kwinter:** Yes. I have no problem with that.

**The Chair:** So we need to ensure that the change then is recognized in the wording of the legislation.

**Mr Yurkow:** I'd suggest that you make a motion to let legislative counsel do that editorially. It's not a change in substance; it's just inserting clausling.

**Mrs Haslam:** I so move, because this is just grammatically putting in place to clarify it. I understand it the way it's written, but if it's grammatically necessary to put an (a) and a (b) to alleviate concerns, then let's do it. That's only a minor change that can be done editorially and I so move it.

**The Chair:** Do we have an agreement to do that? Agreed. Thank you for bringing that to our attention, Mr Kwinter.

Subsection 282(4): Shall the motion carry? All in favour? Opposed? Carried.

Shall section 282, as amended, carry? All in favour? Opposed? Carried.

Shall section 283 carry? All in favour? Opposed? Carried.

Section 284 has amendments.

**Mr Owens:** I move that the French version of subsection 284(1) of the bill be struck out and the following substituted:

"Supervision par l'organe de stabilisation

"284(1) Le directeur donne l'ordre qu'une caisse soit placée sous la supervision de l'organe de stabilisation si celui-ci le lui demande."

The reason for this amendment is that it brings into line the French version with the English version. And all those who think this is fun can come up and do it themselves.

**Mrs Haslam:** You're trying hard.

**The Chair:** Yes, you're doing a very good job, and we're grateful as well that it is in printed text.

Any comments? Seeing none, shall the motion carry? All in favour? Opposed? Carried.

An additional motion, Mr Owens.

**Mr Owens:** I move that the French version of subsection 284(2) of the bill be amended by striking out "surveillance" in the second line of the portion before paragraph 1 and in the second line of paragraph 1 and substituting in each case "supervision."

**The Chair:** Any comments? Seeing none, shall the motion carry? All in favour? Opposed? Carried.

An additional amendment, Mr Owens.

**Mr Owens:** I move that section 284 of the bill be amended by adding the following subsection:

"Interpretation

"(2.1) For the purposes of paragraph 2 of subsection (2), a variation under section 86 does not make a credit union in compliance with prescribed capital and liquidity requirements."

This amendment clarifies that even where a credit union has been granted under section 86 of the bill a variation from prescribed capital and liquidity require-



ments for the purposes of determining whether to place a credit union under supervision, a variation of prescribed capital and liquidity requirements does not mean that the credit union is in compliance with prescribed capital and liquidity requirements.

**The Chair:** Any comments? Seeing none, shall the motion carry? All in favour? Opposed? Carried.

An additional amendment, Mr Owens.

**Mr Owens:** I move that the French version of subsection 284(3) of the bill be amended by striking out "surveillance" in the first line of the portion before clause (a) and in the third line of clause (b) and substituting in each case "supervision."

**The Chair:** Any comments? Seeing none, shall the motion carry? All in favour? Opposed? Carried.

One additional amendment, Mr Owens.

**Mr Owens:** I move that the French version of subsection 284(4) of the bill be amended by striking out "surveillance" at the end and substituting "supervision."

**The Chair:** Shall the motion carry? All in favour? Opposed? Carried.

Shall section 284 of the bill, as amended, carry? All in favour? Opposed? Carried.

Section 285 has an amendment.

**Mr Owens:** I move that subsection 285(1) of the bill be amended by striking out "283 or" in the third and fourth lines.

The amendment deletes and corrects a cross-reference.

**The Chair:** Any comments? Seeing none, shall the motion carry? All in favour? Opposed? Carried.

Another amendment, Mr Owens.

**Mr Owens:** I move that section 285 of the bill be amended by adding the following subsection:

"Notice to deposit insurer

"(4.1) A copy of the superintendent's order shall be served on the corporation."

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The amendment requires that the superintendent's decision on an appeal from a supervision order be served on the deposit insurer.

**The Chair:** Any comments? Seeing none, shall the motion carry? All in favour? Opposed? Carried.

Shall section 285, as amended, carry? All in favour? Opposed? Carried.

**Mr Owens:** I move that the French version of paragraph 1 of subsection 286(1) of the bill be amended by striking out "surveiller" in the first line and substituting "superviser" and by striking out "surveillance" in the third line and substituting "supervision."

**The Chair:** Any comments? Seeing none, shall the motion carry? All in favour? Opposed? Carried.

**Mr Owens:** I move that subsection 286(2) of the bill be struck out and the following substituted:

"Same

"(2) Without limiting the generality of paragraph 3 of subsection (1), the stabilization authority may grant financial assistance to a credit union,

"(a) by purchasing securities of the credit union;

"(b) by making or guaranteeing loans, with or without security or advances to or deposits with a credit union; and

"(c) by taking security for loans or advances to a credit union.

"Exception

"(3) Paragraphs 2 and 3 of subsection (1) do not apply to the corporation as a stabilization authority.

"Subsidiary

"(4) A subsidiary referred to in paragraph 10 of subsection (1) has all the powers set out in subsections (1) and (2) and in subsection 288(1)."

The reason for this, notwithstanding the language, is that it clarifies the scope of financial assistance a stabilization authority may grant in exercising its powers under paragraph 3 of subsection 286(1) to make conditional loans or advances. The loans and advances may involve the purchase of securities, as I indicated, and making guaranteed loans with or without security in taking of security for loans or advances.

Subsection 286(3) also limits the powers of the deposit insurer. When acting as a stabilization authority, the deposit insurer cannot establish a stabilization fund or make conditional loans or advances, and then—I guess we're moving a little bit ahead of ourselves here—subsection 286(4) is a consequential amendment that flows from the two previous amendments.

**Mr Kwinter:** It seems to me that there's a little confusion in the structuring of these amendments. It would seem to make more sense to take the first part of the amendment and amend subsection 286(1) and add these things to it, and then take "Subsidiary," (4), and change the number to—I guess it would stay the same, because what you're really doing is amending 286(2), which deals with a subsidiary, and what you're talking about in the first part of this amendment has nothing to do with a subsidiary. It just has to do with the ability and the powers of the stabilization authority.

It would seem to more naturally flow as "has the following powers," and you would say that notwithstanding what happens in subsection (3), these are the things that happen. But to take subsection 286(2), where you're dealing with subsidiaries, and start talking about these additional powers and the exception to the powers would—from a drafting point of view, the first part of this amendment should be part of 286(1) and then the part that you have with the subsidiary would stay where it is.

**Mr Abols:** That might be another drafting solution, but at the end of the day, you get to the same result. I think it's six of one, half a dozen of the other, quite frankly.

**Mr Kwinter:** Can I have a response from my friends who are doing the wrapup on what you feel about that?

**Mr Yurkow:** It's something I'd like to think about. I'm quite sure the substance isn't changed, but whether there is a more natural way of doing it, right now I'm not sure without thinking about it a bit more. I don't know if

the committee wants to instruct us to take another look at it.

**Mr Kwinter:** If you're looking at this, I would assume that you would keep 286(1) exactly the way it is under your proposed amendments, and this would come under the general subheading of "Powers of stabilization authority." Then you would go to 286(2), where the general heading is "Subsidiary," and you would list this new section.

What I'm saying is that the bulk of this new section has absolutely nothing to do with the subsidiary provisions. It has to do with the powers of the stabilization authority. It would seem to me that it would more naturally be placed as a subsection under 286(1), until you get to that point where you're talking about subsidiaries, and then it would become 286(2). But to include all of this proposed amendment under 286(2) just doesn't—I'm not quarrelling with the content. I'm quarrelling with the format.

**Mr Abols:** My only observation is that if you want to separate the subject matter, powers of the stabilization authority and then powers of the subsidiary, the proposed motion does that because the issue of what are the powers of subsidiary then appears as the last subsection. Subsections (1) and (2) deal with the powers of all stabilization authorities; (3) deals with the powers of the corporation as a stabilization authority, taking away some powers; and then subsection (4) deals with subsidiaries. So there seems to me to be a natural progression from the general to the more specific at the end.

**Mr Kwinter:** There is a natural progression even in the original drafting. All I'm saying is that it just doesn't make any sense to do what is going on. We're not talking about the content; we're talking about the format.

**Mr Owens:** Can I maybe suggest that we do something similar as we did in the last section you raised with respect to clarity, to move a motion that legislative counsel be allowed to work some magic on the ordering?

**The Chair:** That sounds nice, Mr Owens, but I don't know if that gives adequate direction to legislative counsel to deal with the problem. Maybe we could stand it down till this afternoon. All in agreement to stand down this section till this afternoon? Agreed.

**Mr Owens:** I move that clauses 287(1)(a) and (b) of the bill be struck out and the following substituted:

"(a) passed by the board of directors of the stabilization authority or subsidiary, as the case may be;

"(b) confirmed, with or without variation, by at least two thirds of the votes cast at a general meeting of the shareholders of the stabilization authority or subsidiary, as the case may be, duly called for that purpose, or such greater proportion of the votes as the articles provide; and."

The reason for this amendment is that it's the correction of a technical error. It's clarification that it is the board of directors of the stabilization authority or its subsidiary, respectively, that must approve the bylaws. As currently drafted, subsection 287 requires a board of the stabilization authority to approve a subsidiary's bylaws.

**The Chair:** Any comments? Seeing none, shall the

motion carry? All in favour? Opposed? Carried.

Shall section 287, as amended, carry? All in favour? Opposed? Carried.

**Mr Owens:** I move that subsection 288(1) of the bill be amended:

(a) in the French version, by striking out "surveillance" in the first and second lines of the portion before clause (a) and in the fourth line of clause (a) and substituting in each case "supervision"; and

(b) by striking out "and" at the end of clause (e), adding "and its credit and audit committees; and" at the end of clause (f) and adding the following clause:

"(g) propose bylaws for the credit union and amendments to its articles of incorporation."

This amendment adds to the list of the stabilization authority's powers when it's supervising a credit union and the ability to propose bylaws for the credit union and amendments to its articles of incorporation.

**The Chair:** Any comments? Seeing none, shall the motion carry? All in favour? Opposed? Carried.

1140

**Mr Owens:** I move that section 288 of the bill be amended by adding the following subsection:

"Exception

"(1.1) Clause (1)(e) does not apply to the corporation acting as a stabilization authority."

The amendment clarifies that when acting as a stabilization authority, the deposit insurer does not have the authority to provide financial assistance to a credit union under its supervision.

**The Chair:** Any comments? Seeing none, shall the motion carry? All in favour? Opposed? Carried.

**Mr Owens:** I move that subsection 288(2) of the bill be amended by striking out "resolution or act" in the second line and substituting "or resolution," by striking out "made or done" in the fourth line and substituting "or made" and, in the French version, by striking out "surveillance" in the seventh line and substituting "supervision."

The reason for this amendment is that it deletes the reference to "act." Subsection 288(2) requires that the stabilization authority approve all corporate acts by the credit union while under the stabilization authority's supervision. It's our view that the powers are too broad and impractical.

**The Chair:** Any comments? Seeing none, shall the motion carry? All in favour? Opposed? Carried.

Shall section 288, as amended, carry? All in favour? Opposed? Carried.

**Mr Owens:** I move that the French version of section 289 of the bill be amended by striking out "surveillance" in the third line of subsection (1) and in the second and in the fifth and sixth lines of subsection (2) and substituting in each case "supervision."

**The Chair:** Any comments? Seeing none, shall the motion carry? All in favour? Opposed? Carried.

Shall section 289, as amended, carry? All in favour? Opposed? Carried.



Shall section 290 of the bill carry? All in favour? Opposed? Carried.

**Mr Owens:** I move that the French version of paragraph 3 of subsection 291(1) of the bill be amended by striking out “surveillance” in the first line and substituting “supervision.”

That’s again simply a translation to bring a French version in line with the English version.

**The Chair:** Any comments? Seeing none, shall the motion carry? All in favour? Opposed? Carried.

Shall section 291, as amended, carry? All in favour? Opposed? Carried.

Shall section 292 of the bill carry? All in favour? Opposed? Carried.

**Mr Owens:** I move that the French version of section 293 of the bill be amended by striking out “surveillance” in the third-last line of paragraph 1 of subsection (1), in the second line of clause (9)(b) and in the second and third lines of subsection (10) and substituting in each case “supervision.”

**The Chair:** Any comments? Seeing none, shall the motion carry? All in favour? Opposed? Carried.

Shall section 293, as amended, carry? All in favour? Opposed? Carried.

Shall sections 294 through 305 of the bill, inclusive, carry? All in favour? Opposed? Carried.

**Mr Owens:** I move that section 306 of the bill be amended by adding the following subsection:

“Exception

“(3.1) Clause (3)(a) does not apply where the corporation is the liquidator.”

This amendment exempts the deposit insurer from the requirement for the directors’ approval to exercise certain powers as a liquidator, and it reinstates an exemption found under the current act.

**The Chair:** Any comments? Seeing none, shall the motion carry? All in favour? Opposed? Carried.

Shall section 306, as amended, carry? All in favour? Opposed? Carried.

Shall sections 307 through 315, inclusive, carry? All in favour? Opposed? Carried.

Section 316 has an amendment.

**Mr Owens:** I move that paragraph 4 of subsection 316(1) of the bill be amended by striking out “214(4)” at the end and substituting “215(1)”.

This is an amendment that addresses an incorrect internal reference.

**The Chair:** Any comments? Seeing none, shall the motion carry? All in favour? Opposed? Carried.

**Mr Owens:** I move that subsection 316(1) of the bill be amended by adding the following paragraph:

“29. prescribing the form and content of information, circulars and proxies and the discretionary authorities that may be conferred in proxies and excluding the application of similar provisions in regulations made under part VIII of the Business Corporations Act.”

The reason for this is that this amendment creates an

enabling authority for regulations governing information, circulars and proxies.

**The Chair:** Any comments? Seeing none, shall the motion carry? All in favour? Opposed? Carried.

**Mr Owens:** I move that subsection 316(3) of the bill be amended by inserting after “guideline” in the fourth line “as amended from time to time, whether before or after the regulation is filed.”

This amendment ensures that any standard or guidelines adopted in the regulation made under the bill remains current, and that if a guideline or standard is amended, it won’t be necessary to reopen the bill.

**The Chair:** Any comments? Seeing none, shall the motion carry? All in favour? Opposed? Carried.

**Mr Owens:** I move that section 316 of the bill be amended by adding the following subsection:

“Same

“(4) If an amount or rate is to be prescribed under subsection (1), the regulation may prescribe the method of determining the amount or rate.”

The amendment provides for an interpretation clause, and it also ensures that any regulation prescribing an amount or rate may also prescribe the method for calculating that amount.

**The Chair:** Any comments? Seeing none, shall the motion carry? All in favour? Opposed? Carried.

Shall section 316, as amended, carry? All in favour? Opposed? Carried.

Shall sections 317 through 326, inclusive, carry? All in favour? Opposed? Carried.

Section 327 has an amendment.

**Mr Owens:** I move that the French version of clause 327(1)(b) of the bill be amended by striking out “verse” in the third line and substituting “paie.”

**The Chair:** Any comments? Seeing none, shall the motion carry? All in favour? Opposed? Carried.

Shall section 327, as amended, carry? All in favour? Opposed? Carried.

Shall sections 328 through 332, inclusive, carry? All in favour? Opposed? Carried.

**1150**

Section 333 has a PC amendment.

**Mr Carr:** I move that the bill be amended by deleting section 333 and substituting the following therefor:

“Sunset review

“333. Unless the rights of a credit union are terminated pursuant to this act, a credit union shall not carry on its business on a day that is five years after the day on which this section comes into force.”

This was an amendment proposed by the Coalition of Credit Unions and Caisses Populaires of Ontario. This amendment would establish a very aggressive and I think stringent sunset review requirement in the statute. As it’s written, Bill 134 requires the director to review the act every five years and recommend any required amendments to the minister, but the industry is concerned that this does not ensure that the act would be updated every five years. Therefore, the proposed amendment would

require that the act be re-enacted every five years. As we heard through many of the presentations, we have not had too many changes over the last little while. Given the rate of change in the financial sector, credit unions do not want to wait another 17 years for an overhaul. This would in essence force the minister to do that and to review it every five years.

On a personal note, I'm in favour of some of the sunset clauses, so I would obviously be supporting this, and if the government is not, I would appreciate that the parliamentary assistant give some rationale.

**Mr Owens:** I appreciate the motion from Mr Carr. I begin by saying that we will not be supporting this particular amendment. I also appreciate the fact that he's mentioned that it has taken 17 years to bring these changes to fruition and it's our government that's doing that.

If you look at the clause as proposed, I've termed this the "implosion" clause, because what in effect will happen is that the credit unions will be unable to function at the time this section comes into effect. I don't think that's the intent, Mr Carr, that you would want to have by this language.

What we have done is add permissive regulation-making powers to review issues as they arise. I take quite seriously your comments with respect to the financial sector and how quickly things can change as technology changes etc, but it's our view that this clause is not functional.

**Mr Kwinter:** I'll speak briefly to this amendment. I understand the intent of it, but this amendment surely attacks the wrong end of the problem. What this amendment is saying is that a credit union shall not carry on its business on a day that is five years after the date on which it comes into effect.

It seems to me that the proposer is really concerned about the director and the act, to make sure the act is kept up to date, but what he's really doing is putting in a punitive clause that's going to impact on the credit unions without bringing any kind of pressure other than the howling of the credit unions as the five-year term comes to an end and they find they're no longer in business. It would seem to me that the intent should be bringing pressure not on the credit unions but on the government, the act, the directors, as opposed to putting the credit unions under the gun. I'd be interested to hear the proponent's comment on that.

**Mr Carr:** What this essentially will do is force the government to take a look at it. Obviously, if there's a termination in there, they will be forced to look at it. The way it stands now, I suspect we will not. Given that we haven't looked at it for 17 years, and there are numerous reasons different governments have not, if there is a termination clause in there, obviously it will force the government to take a look at it every five years. If any changes are required, they will be done, and if not, you simply carry on, and that can be done very easily. It is rather strong in terms of termination, but this will ensure that it gets reviewed.

It really doesn't matter too much, as the parliamentary

assistant has already said that the government won't be supporting it. As I mentioned earlier, it was an amendment that was proposed by the coalition of the credit unions.

**Mr Owens:** Once again I want to thank Mr Carr for pointing out that it is the NDP government and Floyd Laughren who are finally making these changes and updating the financial services legislation.

**Mr Carr:** And it'll be another 17 years before you're in power again.

**The Chair:** With regard to the PC motion, all those in favour? Opposed? That motion is lost.

Shall section 333 of the bill carry? All in favour? Opposed? Carried.

**Mr Owens:** I move that section 334 of the bill be amended by striking out "or" at the end of clause (b), by adding "or" at the end of clause (c) and by adding the following clause:

"(d) in the case of a member, addressed to the member at his or her address as shown in the records of the credit union or by personal delivery to the member at his or her place of employment."

This is addressed as to how notices must be delivered to members of the credit union.

**The Chair:** Any comments? Seeing none, shall the motion carry? All those in favour? Opposed? Carried.

Shall section 334 of the bill, as amended, carry? All in favour? Opposed? Carried.

I would like to suggest at this time that we recess.

**Mr Owens:** If we could quickly finish this stuff up, these motions are not substantive in nature.

**The Chair:** Mr Owens, I think you're not correct.

**Mr Owens:** All right, then let's go.

**The Chair:** We will then proceed with section 335 of the bill when we resume the committee at 3:30 or immediately following routine proceedings this afternoon. This meeting stands recessed.

*The committee recessed from 1158 to 1540.*

**The Chair:** The standing committee on finance and economic affairs will come to order. We are continuing with clause-by-clause of Bill 134. I have an indication from Mr Owens that we will at this time revisit section 269 of the bill, which was stood down.

**Mr Owens:** I move that subsection 269(4) of the bill be struck out and the following substituted:

"Same

"(4) The corporation may,

"(a) enter into a deposit administration agreement with another credit union whereby that credit union agrees to pay on behalf of the corporation,

"(i) the amount of the deposit according to the terms of the deposit, or

"(ii) before maturity of the deposit, an amount equal to the principal of and accrued interest on the deposit on the day it is paid;

"(b) pay, before maturity of the deposit, an amount equal to the principal of and accrued interest on the



deposit on the day it is paid.”

I'll ask Mr Abols to explain the reworked amendment.

**Mr Abols:** This essentially allows the deposit insurer to employ another credit union as an agent in dealing with deposits of an insolvent credit union. Under the terms of a deposit administration agreement, the deposit insurer can pass on the obligation to administer the deposit on a day-to-day basis to the credit union agent or, in (b), it could directly pay the deposit out on its own. There's sort of a cash-flow issue here and the deposit insurer doesn't always have the funds to address a large liability in the event of a credit union's failure.

**The Chair:** Any comments? Seeing none, shall the motion carry? All those in favour? Opposed? Carried.

We have another amendment that was stood down, and that was 286.

**Clerk of the Committee (Ms Lynn Mellor):** I think maybe you want to carry 269, as amended, first.

**The Chair:** I'm sorry. Section 269, as amended, all those in favour? Opposed? Carried.

We then will proceed to section 286 of the bill for amendment.

**Mr Owens:** For those who weren't here this morning, there was an issue with respect to clarity and flow of language that legislative counsel was asked to take a look at. I'll either ask legislative counsel or Mr Abols to respond on that.

**Mr Yurkow:** I'll respond to that. Section 286 was set up so that subsection (1) deals with the powers of the stabilization authority. Subsection (2) is a clarification of one of the powers. Subsection (3) sets out the exceptions to the powers. Subsection (4) is in the nature of an interpretation or definition section or subsection.

Subsection (2) could have been incorporated in paragraph 3 of 286(1). That would have made a very long and, I think, complicated section. So the decision was made to break it out as a separate subsection of its own that is a little easier to read.

In looking at it, I can't see a reasonable way of changing it. Now, you could play around with the order of subsections (2), (3) and (4). It makes no difference to the substance and I can see nothing other than personal preference as to how it is placed or ordered. There doesn't seem to be any particularly more compelling, natural way of doing it. Having looked at it, I can't see a change that would, to my mind, improve or clarify the arrangement.

**Mr Kwinter:** Without trying to go over the whole issue all over again, my concern was that the initial subsection 286(2) as proposed really deals with the powers of the stabilization authority which are covered under 286(1), and to make them as part of 286(2)—as I say, the parts about the subsidiary and things of that kind I have no problem with. It just seemed to make sense that this is where they should be, because all this really does is explain the powers of the stabilization authority. It doesn't in any way change the substance of it, and I conceded that right at the beginning.

You have to understand this is how lawyers make their

money, by interpreting these kinds of documents. It's one thing for us as members of this committee—I have to say with all frankness not all members of this committee are that familiar even with this particular act, but at least we're dealing with it and we're dealing with it over a period of time. But for someone who has no experience at all with this particular statute and has got to then look at certain parts of it, the idea is that it should be as user-friendly as possible. I don't see the big hangup with the fact that we take all of those aspects in this particular section that deal with the powers of the stabilization authority and put them under one subsection.

As I say, I'm not going to prolong this, because it doesn't in any way change the substance. It's just, as I say, in the essence of making it more user-friendly and making it easier because—trust me—when someone refers to this they look at the annotations on the side to try to find the spots where they can find the reference to the issue they're trying to resolve.

If it gets a little confusing and if someone gets to the point where they say “Powers of stabilization authority” and they read the things in that section, there is the possibility that they won't go further under a situation where those powers are hidden. I don't mean hidden in the sense that there is deliberate attempt, but it's in a section that deals with some other issue. That is my concern. I just leave it at that and I've raised the point. Whatever response I get I'm going to have to accept.

**Mr Yurkow:** If I may, to address Mr Kwinter's point, the margin note in sub (2) says “Same,” so anyone reading sub (1) with the “Powers of stabilization authority,” the very next margin note is a clue that it deals with identical subject matter.

I must say that I think the government, and certainly legislative counsel, has an interest in making a legislation as user-friendly as possible. People may disagree on a particular form and some may find one form easier than another, and I guess there we differ.

**Mr Kwinter:** I've made my point. Thank you.

**The Chair:** Thank you, Mr Kwinter. You have certainly raised a point, and at this point we will continue on.

Shall the motion carry? All those in favour? Opposed? Carried.

Shall section 286, as amended, carry? All those in favour? Opposed? Carried.

Now we will continue with section 335 of the bill.

Shall section 335 of the bill carry? All those in favour? Opposed? Carried.

There's an amendment to the bill which is 335.1, which is a Liberal motion. Mr Kwinter.

1550

**Mr Kwinter:** I move that the bill be amended by adding the following section:

“335.1. Clause 102(1)(a) of the act is repealed and the following substituted:

“(a) prepare annually and deliver to the superintendent, on or before the prescribed date for the prescribed category of insurer, a statement of the condition of affairs

of the insurer for the year that ended, at the election of the company in its bylaws, on the 31st day of October or the 31st day of December next preceding the delivery of the statement; and"

I have to say that this amendment was proposed by one of my colleagues. I have read it and I cannot give you any further explanation other than what it says.

**The Chair:** That's fine. Did you want to comment, Mr Owens?

**Mr Owens:** The government would like to indicate support for Mr Kwinter's amendment.

**The Chair:** Mr Johnson, would you like to make a comment?

**Mr David Johnson (Don Mills):** Is this to do with the annual report? Is that what this is about? Is this somewhat equivalent to the amendment that I was going to put later on? Isn't that sneaky. At any rate, I wonder if staff could analyse—is it precisely identical? If it is, obviously I'll support the Liberal amendment.

**The Chair:** As a matter of fact, if I can just speak to both section 335.1 and 346.1 and advise the committee that this amendment, proposed as an amendment to section 102 of the Insurance Act, which sets out annual and interim statements insurers are required to prepare and deliver, has not been dealt with in the bill. Therefore I must rule that the amendment's out of order as it introduces a principle beyond the scope of the bill. However, I have an indication that if we have unanimous consent to allow the amendment to stand, then so be it. Mr Johnson?

**Mr David Johnson:** Yes, I agree. I was going to dash back and get my notes on it, because unfortunately I left them back in my office, but my recollection is that because of the way it's set up now, there's a requirement to report on October 31 and then another requirement to report at the end of December. Consequently, they're having to go through the rigour of two reports.

It is my understanding that this pertains to the life insurance companies, and that extra two months would be picked up in the subsequent year's report at any rate. So it really doesn't serve any particular purpose, as I can recall, to force the insurance industry to do that a second time.

There is considerable cost associated with this too, as I can recall. I remember talking to a representative of one of the firms who indicated that for his firm alone the estimated cost of having to go through the second report was in the nature of \$100,000. This is in terms of people power, I guess, and paper and associated costs. From my information, this would certainly be a worthwhile thing to support, and I'm glad to hear—at least I think I heard that the government is going to support this amendment as well.

**Mr Owens:** If you recall the public hearings portion of the committee, the insurance companies had come in and requested this specific amendment, and all we are doing first of all is acceding to their request. What this does is it simply harmonizes with what's currently in federal statute. What this in fact will do is give the insurance corporations the choice of reporting on either

October 31 or December 31. It's not a requirement for two filings.

**The Chair:** We have unanimous consent to allow this amendment to stand. All those in favour? Opposed? Carried.

That brings us to section 336 of the bill, and there's an amendment.

**Mr Owens:** I move that section 336 of the bill be amended by adding the following subsection:

"(0.1) Paragraph 31 of subsection 121(1) of the act is repealed and the following substituted:

"31. prescribing classes of bodies corporate in whose fully paid shares a mutual insurance corporation that is a participant in the fire mutuals guarantee fund may invest its funds under subsection 433(9) and setting out what constitutes control for the purpose of subsection 433(9)."

I'll ask ministry staff to provide an explanation.

**The Chair:** And you are, for the purpose of the committee members and Hansard?

**Ms Ann Bythell:** My name is Ann Bythell.

This is the first of four provisions that deal with fire mutuals. It's the section that gives the authority to make regulations prescribing classes of corporations in which fire mutual insurance companies can invest.

**The Chair:** Any further comments? Seeing none, shall the motion carry? All those in favour? Opposed? Carried.

We have an additional amendment, a Progressive Conservative motion.

**Mr David Johnson:** I move that section 336 of the bill, amending subsection 121(1) of the act, as amended by the statutes of Ontario, 1993, chapter 10, section 12, be further amended by adding the following paragraph:

"37.5 prescribing classes of bodies corporate in whose fully paid shares an insurer may invest its funds under clause 433(8)(h)."

This is in discussion with the Canadian Life and Health Insurance Association. CLHIA had suggested that the provisions of the government's amendment in terms of broader subsidiary ownership and investment activities for the fire mutuals be extended to include all Ontario chartered insurance companies. The association maintains that this amendment is necessary to level the playing field for other financial institutions in addition to the fire mutuals.

It's pointed out that as permitted subsidiaries are to be prescribed in the regulation, they could still be controlled by the regulator so as to avoid any solvency concerns. This would be simply permitting the classes to be included in the regulations.

**Mr Owens:** I just want to indicate to the member for Don Mills that the government will not be supporting his amendment. One reason for this is that to begin with, the fire mutuals, as indicated by the last amendment that was passed, there's a guarantee fund that all companies stand behind each other with respect to their businesses. This is not the case in the areas that Mr Johnson has tried to address. I'll ask ministry staff to continue with that explanation.



**Ms Bythell:** The second reason would be that fire mutuals are mutual companies, and of the five life insurance companies incorporated in Ontario, four are joint stock; only one is a mutual company. Joint stock companies are able to diversify, as opposed to mutual companies that are not. The one company that is a mutual company is very small and wouldn't be able to have the same kind of size that would lend itself to diversifying downstream.

**The Chair:** Mr Sutherland?

**Mr Kimble Sutherland (Oxford):** Sorry, if there's more debate first from Mr Johnson, I'll wait.

**Mr David Johnson:** Just one follow-up question. So the staff would feel that this wouldn't be relevant. Is that what I take from your comments, that there would only be one entity that would be in a position to take advantage of the amendment?

**Ms Bythell:** I don't think it's a question of relevance as much as the fact that the fire mutuals are different. The government has addressed a very different set of companies that all belong to the fire mutuals guarantee fund. It's simply a different situation.

**Mr Sutherland:** I'd like to have a 10-minute recess, please.

**The Chair:** Sure. Everybody in agreement? I have no problem, but does the rest of the committee have a problem with that?

**Mr Elston:** Sorry, what's happening? We're moving along here fairly well. I'm just wondering what's going on.

**Mr Sutherland:** I'd just like a 10-minute recess. We're not filibustering or anything.

**The Chair:** Sure, we'll have a 10-minute recess. We'll resume in 10 minutes, at 10 after 4.

*The committee recessed from 1601 to 1617.*

**The Chair:** I call the committee back to order. We will continue with Mr Johnson's motion 336, which we were debating. Were there any further comments with regard to that motion? Seeing none, shall the motion carry? All those in favour? Opposed? The motion is lost.

Shall section 336, as amended, carry? All those in favour? Opposed? Carried.

Section 337 has amendments.

**Mr Owens:** I move that section 337 of the bill be amended by adding the following subsection:

"(1.1) Subsection 393(5) of the act is repealed."

This section mandates that an agent's licence must limit the agent's authority to the class of insurance for which his or her appointing or sponsoring insurer was licensed. This mandate is not needed, and its continuation may create confusion in the law because a life insurance agent will not always be dependent upon the continuing appointment or sponsorship of a single insurer.

**The Chair:** Any additional comments? Seeing none, shall the motion carry? All those in favour? All those opposed? Carried.

An additional amendment, Mr Owens.

**Mr Owens:** I move that section 337 of the bill be

amended by adding the following subsection:

"(2.1) Subsection 393(12) of the act is repealed and the following substituted:

"Authority of agent

"(12) A licence referred to in clause (2)(b) or (2)(c) authorizes an agent to act for one insurer only.

"Same

"(12.1) For purposes of subsection (12), the insurer must be specified in the licence and licensed for the classes of insurance referred to in clause (2)(b) or (2)(c).

"Representation restricted

"(12.2) An agent holding a licence referred to in clause (2)(b) or (2)(c) shall not make any representation to the public, by advertisement or otherwise, that the agent is an agent of any insurer other than the one specified in the licence for the purposes of selling the classes of insurance specified in the licence."

This amendment is needed to add a clarification that the restriction is imposed on the licence of a general insurance agent and is only applicable to general insurance activities of that agent. If an agent holds other licences, then his or her activities pursuant to those other licences would not be affected by this restriction.

**The Chair:** Any comments? Seeing none, shall the motion carry? All those in favour? Opposed? Carried.

An additional amendment, Mr Owens.

**Mr Owens:** I move that section 337 of the bill be amended by adding the following subsection:

"(2.2) Section 393 of the act is amended by adding the following subsection:

"Same

"(13.1) For the purpose of subsection (13), mutual insurance corporations that participate in the fire mutuals guarantee fund and insurers in whose fully paid shares a mutual insurance corporation has invested under subsection 433(9) shall be deemed to be an affiliated group of insurers carrying on business as a common undertaking."

I'll ask ministry staff to provide an explanation.

**Ms Bythell:** This section allows fire mutual insurance corporations that are members of the guarantee fund and their insurance subsidiaries to be deemed to be an affiliated group of insurers carrying on business as a common undertaking. Therefore, for the purposes of subsection 393(13), their insurance agents may be licensed to act for more than one fire mutual insurance company.

**The Chair:** Any further comments? Seeing none, shall the motion carry? All those in favour? Opposed? Carried.

Shall section 337, as amended, carry?

**Interjection:** No, there's one more.

**The Chair:** Is there? I'm sorry, there is indeed. An additional amendment to section 337.

**Mr Owens:** I move that subsection 393(17) of the Insurance Act, as set out in subsection 337(3) of the bill, be amended by striking out "(13)" in the third line and substituting "(11)".

I'll ask ministry staff to provide an explanation.

**Ms Bythell:** The new subsection of the act, 393(17), provides that if there's a self-regulating organization that has been recognized by the commissioner of insurance, certain subsections of the act that authorize the superintendent of insurance to deal with the licence for life insurance agents will not apply. Subsection 393(12) has been amended. It refers only now to general insurance agents. Therefore, it's no longer necessary to have subsections (12) and (13) of 393 inapplicable if there is a self-regulating organization in place.

**The Chair:** Any comments? Seeing none, shall the motion carry? All those in favour? Opposed? Carried.

Shall section 337, as amended, carry? All those in favour? Opposed? Carried.

Shall sections 338 through 342, inclusive, carry? All those in favour? Opposed? Carried.

Section 343 has an amendment.

**Mr Owens:** I move that section 343 of the bill be amended by adding the following subsection:

"(2) Subsection 433(9) of the act is repealed and the following substituted:

"Same

"(9) Despite subsection (1) and section 435, a mutual insurance corporation that participates in the fire mutuals guarantee fund may, with the approval of the commissioner and subject to any terms and conditions he or she may impose, invest in the fully paid shares of a body corporate of a prescribed class incorporated in Canada if, after the investment, one or more of the mutual insurance corporations that participate in the fund controls, or as a result of the investment will acquire control of, the body corporate."

I'll ask ministry staff to provide an explanation.

**Ms Bythell:** One or more fire mutual insurance corporations will be able to invest in the shares of corporations of prescribed classes if the investment results in control of the corporations. The investments will be subject to the approval of the commissioner of insurance and any terms and conditions that the commissioner may impose.

The prescribed classes of corporations will be set out in regulations and will consist of classes of financial institutions, service corporations and ancillary business corporations.

**The Chair:** Any further comments? Seeing none, shall the motion carry? All those in favour? All those opposed? Carried.

Shall section 343, as amended, carry? All those in favour? Opposed? Carried.

Mr Johnson for new section 343.1, an amendment.

**Mr David Johnson:** I move that the bill be amended by adding the following new section:

"343.1 Subsection 433(8) of the act is amended by adding the following clause:

"(h) with the prior approval of the commissioner, any corporation of a prescribed class."

I think that's an amendment that ties in with the

previous amendment that I put, and I'm a little bit lost here as to know if this one still makes sense. We know what the outcome will be at any rate, because the rationale from the staff and the government has already been given in opposition to this. I take it that would persist here.

It is an amendment aiming at broadening the government's amendment for broader subsidiary ownership and investment activities for fire mutuals to also include all Ontario chartered insurance companies, and the attempt there is to level the playing field. We've already gone through this discussion, so I'll simply place that amendment.

**The Chair:** Mr Owens, do you want to comment on this?

**Mr Owens:** I'll ask ministry staff to respond.

**Ms Bythell:** I think that we've already commented on this section as it related to the motion to allow regulations to be prescribed, so I'm not sure if there's any further comment that I can make.

**Mr David Johnson:** That was my observation as well.

**The Chair:** Would you like to leave this motion standing or do you choose to withdraw it?

**Mr David Johnson:** We'll vote on it.

**Mr Owens:** We won't be supporting it.

**Mr David Johnson:** I anticipated you wouldn't be supporting it.

**Mr Owens:** Just in case you were wondering. We weren't going to leave anything to chance here.

**The Chair:** All those in favour of the PC motion? All those opposed? That motion is lost.

Shall sections 344, 345 and 346 carry? All those in favour? Opposed? Carried.

We have a PC amendment, new section 346.1.

**Mr David Johnson:** My understanding is that this is entirely equivalent to the amendment that was placed by the Liberal Party. Consequently, I'll withdraw it. It's already approved.

**The Chair:** I just thought I'd allow you to do that.

Shall section 347 carry? All those in favour? Opposed? Carried.

Section 348 has an amendment.

1630

**Mr Owens:** I move that subsection 348(8) of the bill be amended by inserting "by" immediately before "a credit union" in the fourth line.

The reason for this amendment is it's a technical change that would conform the amendment that would be made by subsection 348(8) of the bill to the grammatical structure of the provision of the act that is being amended.

**The Chair:** Any further comments? Seeing none, all those in favour of the motion? All those opposed? Carried.

Shall section 348, as amended, carry? All those in favour? Opposed? Carried.



Shall sections 349, 350 and 351 carry? All those in favour? Opposed? Carried.

Section 352 has an amendment.

**Mr Owens:** I move that subsection 6(4) of the Securities Act, as set out in section 352 of the bill, be amended by striking out “a” in the second line and substituting “another.”

This is a technical amendment that essentially has no policy significance since the definition of “director” includes executive director, and assignment of the powers and duties of executive director can only be made to another director.

**The Chair:** Any further comments? Seeing none, shall the amendment carry? All those in favour? Opposed? Carried.

Shall section 352, as amended, carry? All those in favour? Opposed? Carried.

Shall section 353 of the bill carry? All those in favour? Opposed? Carried.

Section 354 has an amendment.

**Mr Owens:** I move that subsection 9(1) of the Securities Act, as set out in section 354 of the bill, be struck out and the following substituted:

“Appeal

“(1) A person or company directly affected by a final decision of the commission, other than a decision under section 74, may appeal to the Divisional Court within 30 days after the later of the making of the final decision or the issuing of the reasons for the final decision.”

The reason for this amendment—and we would like to credit Mr Phil Anisman and will call this the Anisman section—is that it’s a technical amendment that clarifies when the 30-day period begins. These are concerns that were raised in a brief presented to us.

**The Chair:** Any comment on the amendment? Seeing none, shall the motion carry? All those in favour? Opposed? Carried.

Shall section 354, as amended, carry? All those in favour? Opposed? Carried.

Shall section 355 carry? All those in favour? Opposed? Carried.

Section 356 has amendments.

**Mr Owens:** I move that subsection 17(2), exclusive of the clauses, of the Securities Act, as set out in section 356 of the bill, be struck out and the following substituted:

“Opportunity to object

“(2) No order shall be made under subsection (1) unless the commission has, where practicable, given reasonable notice and an opportunity to be heard to.”

**Mr Kwinter:** Point of order, Mr Chairman: You’re reading the amendment to 356 of the bill?

**Mr Owens:** That’s right, subsection 17(2).

**Mr Kwinter:** What happened to 15(1) and 15(2)?

**Clerk of the Committee:** The original amendment was 356, subsections 15(1) and (2) of the act. The next one, which is the one that was brought to you this

morning, was subsection 17(2) of the act and then the other one that was in the original package was 21.8(3)

**Mr Kwinter:** That is correct.

**The Chair:** I’d like to thank Mr Kwinter for bringing that to the Chair’s attention and thank the clerk for the direction.

**Mr Owens:** I move that subsections 15(1) and (2) of the Securities Act, as set out in section 356 of the bill, be struck out and the following substituted:

“Report of investigation or examination

“15. (1) The person or persons appointed under subsection 11(1) or 12(1) shall, at the request of the chair of the commission or of a member of the commission involved in making the appointment, provide a report to the chair or member, as the case may be, or any testimony given and any documents or other things obtained under section 13.

“Same

“(2) The person or persons appointed under subsection 11(5) shall, at the request of the chair of the commission, provide a report to the chair or any testimony given and any documents or other things obtained under section 13.”

I’ll ask securities commission staff to explain the amendment.

**Ms Joan Smart:** The reason for these amendments is to make it clear that the report of either the investigation or the financial examination doesn’t automatically go to the commissioners; it only goes upon request. The concern might be that if it appears that it automatically goes to the commission, there may be allegations of bias raised in relation to the commissioners. The practice now is that it does not automatically go to the commissioners.

**Mr Kwinter:** On a point of order, Mr Chair: The parliamentary assistant was reading and he used the term “a person or persons” on two different occasions. My copy doesn’t have that. I was just wondering if those amendments were made—maybe there are other amendments that I wasn’t really following, because I don’t have that in my copy.

**The Chair:** I’ll see if I can get to the bottom of this, Mr Kwinter. Mr Kwinter’s information is not the same as the information that Mr Owens read.

**Mr Kwinter:** On subsection 15(1) and “Same, (2)” you started out and you said, “a person or persons.” My amendment doesn’t show “or persons.” All I’m saying is that I have no quarrel with it; I just want to make sure that the document I’m looking at is the same document, and whether there are any other changes I’m not aware of.

**The Chair:** Thank you for bringing that to my attention. Indeed, Mr Owens, the motion that I have before me and, I suspect, other members of the committee—

**Mr Owens:** Can I suggest we take a couple of minutes to ensure that my clause-by-clause binder is complete and in line with what we’ve given to members? It’s becoming a little embarrassing to be doing this.

**The Chair:** By all means, Mr Owens. We’ll recess for

a couple of minutes until Mr Owens comes back.

*The committee recessed from 1639 to 1643.*

**Mr Owens:** I want to apologize to the committee on behalf of the ministry. It appears that through this monumental collating and editing process some things were misfiled, so we're just in the process of getting things back together. We'll be another couple of minutes.

**The Chair:** In that case we'll continue to recess until Mr Owens gets the proper documentation.

*The committee recessed from 1644 to 1647.*

**The Chair:** The committee will come to order. We are now at section 356 of the bill with amendments, and it was brought to our attention that there was a slight error in the amendment Mr Owens was reading now. I believe he has the corrected material.

**Mr Owens:** Let's try this for the third time and see if we can get it right. I'll keep my eye on Mr Kwinter to see if he shakes his head up and down or not.

I move that subsections 15(1) and (2) of the Securities Act, as set out in section 356 of the bill, be struck out and the following substituted:

"Report of investigation or examination

"15(1) A person appointed under subsection 11(1) or 12(1) shall, at the request of the chair of the commission or of a member of the commission involved in making the appointment, provide a report to the chair or member, as the case may be, or any testimony given or any documents or other things obtained under section 13.

"Same

"(2) A person appointed under subsection 11(5) shall, at the request of the chair of the commission, provide a report to the chair or any testimony given and any documents or other things obtained under section 13."

I'll ask Ms Smart to provide the explanation. Then we'll vote on it.

**The Chair:** I believe Ms Smart already gave the explanation. Are there any comments from the committee members? Seeing none, shall the motion carry? All those in favour? Opposed? Carried.

**Mr Owens:** I move that subsection 17(2), exclusive of the clauses, of the Securities Act, as set out in section 356 of the bill, be struck out and the following substituted:

"Opportunity to object

"(2) No order shall be made under subsection (1) unless the commission has, where practicable, given reasonable notice and an opportunity to be heard to."

**Ms Smart:** This amendment is intended to clarify that a person or company who's notified that the commission is considering a request for disclosure of matters arising from an investigation or a financial examination also has the right to an opportunity to make a submission by or against the disclosure order.

**The Chair:** Any comments? Seeing none, shall the motion carry? All those in favour? Opposed? Carried.

**Mr Owens:** I move that subsection 21.8(3) of the Securities Act, as set out in section 356 of the bill, be struck out.

**Ms Smart:** It used to be that auditors of TSE or IDA members were required to audit and report on the financial affairs of members to the auditor of the TSE or the IDA who reviewed the reports. For that reason, it was necessary for the TSE or IDA auditor to have a certain amount of experience. That's no longer the case. Now the auditor of the TSE or the IDA only audits the institutions, and as a result, experience in the securities industry is not absolutely necessary.

**The Chair:** Any comments? Seeing none, shall the motion carry? All those in favour? Opposed? Carried.

Shall 356, as amended, carry? All those in favour? Opposed? Carried.

Shall sections 357 through 360, inclusive, carry? All those in favour? Opposed? Carried.

Section 361 has an amendment.

**Mr Owens:** I move that the English version of section 361 of the bill be amended by inserting "or" immediately before "a credit" in the third line.

**Ms Smart:** That's simply a technical amendment.

**The Chair:** Any comments? Seeing none, shall the motion carry? All those in favour? Opposed? Carried.

Shall section 361, as amended, carry? All those in favour? Opposed? Carried.

Section 362 has an amendment.

**Mr Owens:** I move that clause (c/2) of paragraph 1 of subsection 35(2) of the Securities Act, as set out in subsection 362(5) of the bill, be amended by striking out "member credit unions" in the third and fourth lines and substituting "members."

**Ms Smart:** Again, that's simply a technical amendment.

**The Chair:** Any comments? Seeing none, shall the motion carry? All those in favour? Opposed? Carried.

**Mr Owens:** I move that subsection 362(7) of the bill be struck out and the following substituted:

"(7) Paragraph 9 of subsection 35(2) of the act is repealed and the following substituted:

"9. Membership shares of a credit union within the meaning of the Credit Unions and Caisses Populaires Act, 1993."

**Ms Smart:** Again, that's just a technical amendment.

**The Chair:** Any comments? Seeing none, shall the motion carry? All those in favour? Opposed? Carried.

**Mr Owens:** I move that paragraph 9.2 of subsection 35(2) of the Securities Act, as set out in subsection 362(8) of the bill, be amended by striking out "member credit unions" in the first and second lines and substituting "members."

**Ms Smart:** That's a technical amendment.

**The Chair:** Shall the motion carry? All those in favour? Opposed? Carried.

Shall section 362, as amended, carry? All those in favour? Opposed? Carried.

Shall sections 363 through 370, inclusive, carry? All those in favour? Opposed? Carried.

Section 371 has an amendment.



**Mr Owens:** I move that clause 122(1)(a) of the Securities Act, as set out in section 371 of the bill, be amended by striking out "the director" in the fourth line and substituting "a director."

**Ms Smart:** That's a technical amendment relating to the definition of "director."

**Mr Kwinter:** On a point of order, Mr Chair: There's an amendment to 371, clauses 122(1)(a) and (b).

**The Chair:** Mr Owens, would you like to just withdraw.

**Mr Owens:** Withdraw.

**The Chair:** Thank you, Mr Owens.

**Mr Owens:** I've had some practice in the House.

**The Chair:** Any further comments? Seeing none, shall the motion carry?

**Interjection:** He didn't read the new one in.

**The Chair:** Didn't you read the new one in? My apologies, Mr Owens.

**Mr Owens:** I move that clauses 122(1)(a) and (b) of the Securities Act, as set out in section 371 of the bill, be struck out and the following substituted:

"(a) makes a statement in any material, evidence or information submitted to the commission, a director, any person acting under the authority of the commission or the executive director or any person appointed to make an investigation or examination under this act that, in a material respect and at the time and in the light of the circumstances under which it is made, is misleading or untrue or does not state a fact that is required to be stated or that is necessary to make the statement not misleading;

"(b) makes a statement in any application, release, report, preliminary prospectus, prospectus, return, financial statement, information circular, takeover bid circular, issuer bid circular or other document required to be filed or furnished under Ontario securities law that, in a material respect and at the time and in the light of the circumstances under which it is made, is misleading or untrue or does not state a fact that is required to be stated or that is necessary to make the statement not misleading; or."

**Ms Smart:** As currently provided in the bill, a statement can give rise to an offence if it's misleading or untrue in a material respect or if it omits to state a fact that is necessary or required to be stated so that the statement is not misleading. Thus, even if a factual omission in a statement is not material in any respect, it could give rise to an offence. This amendment clarifies that in order for a statement to give rise to an offence, the statement must be misleading or untrue in a material respect or must involve a factual omission in a material respect, given the time and circumstances under which it's made.

**Mr Kwinter:** Just for clarification, so I understand what we're doing, the parliamentary assistant read, before I brought his attention to this one, a particular amendment. Do I understand that particular amendment has been withdrawn?

**The Chair:** Yes.

**Mr Kwinter:** So that is no longer of any effect and

we're now dealing with this one?

**The Chair:** Yes.

**Mr Kwinter:** That's fine.

**The Chair:** Any further comments? Seeing none, shall the motion carry? All those in favour? Opposed? Carried.

Shall section 371 of the bill, as amended, carry? All those in favour? Opposed? Carried.

Shall sections 372 through 378, inclusive, carry? All those in favour? Opposed? Carried.

There are several amendments to section 379 of the bill. The first one is subsection 146(1).

**Mr Owens:** I move that subsection 146(1) of the Securities Act, as set out in section 379 of the bill, be struck out and the following substituted:

"No privilege

"146(1) Despite subsection 33(4) of the Evidence Act, the commission may by order compel a bank or officer of a bank, in an investigation, financial examination or hearing under Ontario securities law to which the bank is not a party, to produce any book or record the contents of which can be proved under section 33 of the Evidence Act or to appear as a witness to prove the matters, transactions and accounts contained in the book or record."

**Ms Smart:** This amendment clarifies that a bank or an officer of the bank does not automatically lose the protection of subsection 33(4) of the Evidence Act. An order of the commission will be required before a bank or officer of the bank may be compelled as a witness or to produce documents in an investigation, financial examination or hearing under Ontario securities law to which the bank is not a party.

**The Chair:** Any comments? Seeing none, shall the motion carry? All those in favour? Opposed? Carried.

**Mr Owens:** I move that section 148 of the Securities Act, as set out in section 379 of the bill, be amended by striking out "the director" in the second and third lines and substituting "a director."

**Ms Smart:** This is a technical amendment.

**The Chair:** Any comments? Seeing none, shall the motion carry? All those in favour? Opposed? Carried.

**Mr Owens:** I move that section 150 of the Securities Act, as set out in section 379 of the bill, be amended by striking out "an order" in the third line and substituting "a decision."

**Ms Smart:** This is a technical amendment. The term "decision" as defined in the bill includes an order.

**The Chair:** Any comments? Seeing none, shall the motion carry? All those in favour? Opposed? Carried.

**Mr Owens:** I move that section 151 of the Securities Act, as set out in section 379 of the bill, be amended by adding the following subsection:

"Filing decision

"(2) A decision of a director may not be filed with the court under subsection (1) until the time permitted for an application to review the director's decision pursuant to subsection 8(2) has expired or, if the decision has been

appealed, the commission has confirmed it."

1700

**Ms Smart:** This amendment clarifies that a director's decision will not be enforced as an order of the court until it has become final.

**The Chair:** Any comments? Seeing none, shall the motion carry? All those in favour? Opposed? Carried.

**Mr Owens:** I move that the French version of subsection 152(2) of the Securities Act, as set out in section 379 of the bill, be amended by striking out "Dans la mesure du possible," at the beginning.

**Ms Smart:** This is a technical amendment.

**The Chair:** Any comments? Seeing none, shall the motion carry? All those in favour? Opposed? Carried.

Shall section 379 of the bill, as amended, carry? All those in favour? Opposed? Carried.

Shall section 380 of the bill carry? All those in favour? Opposed? Carried.

Shall section 381 carry? All those in favour? Opposed? Carried.

We have a government motion, new section 381.1.

**Mr Owens:** I move that the bill be amended by adding the following section:

"Corporations Act

"381.1 Section 141 of the Corporations Act is amended by adding the following subsection:

"Networking

"(5) An insurer incorporated under this act may,

"(a) act as an agent for any person in respect of the provision of any service that is provided by a financial institution;

"(b) enter into an arrangement with any person in respect of the provision of that service; and

"(c) refer any other person to a person referred to in clause (a) or (b)."

**Mr Abols:** This is a provision which just clarifies that mutual insurers have the ability to network products, or insurers generally have the ability to network products.

**The Chair:** I'd like to bring to the attention of committee members that this amendment is out of order. It's beyond the scope of the bill, as it amends the Corporations Act, which has not been opened.

**Mr Owens:** Can I request unanimous consent that we're able to proceed with this section?

**The Chair:** Do we have unanimous consent to proceed? Agreed.

All those in favour of the motion? Opposed? Carried.

**Mr Elston:** I have several other amendments to the Corporations Act, then.

**Mr Wiseman:** You just happen to have them in your pocket.

**The Chair:** Shall sections 382 through 394, inclusive, carry? All those in favour? Opposed? Carried.

Shall the title carry? All those in favour? Opposed? Carried.

Shall the bill, as amended, carry? All those in favour? Opposed? Carried.

Shall I report Bill 134, as amended, An Act to revise the Credit Unions and Caisses Populaires Act and to amend certain other Acts relating to financial services? Agreed.

**Mr Owens:** Just before we adjourn, I'd like to thank the members of the committee for their work, particularly Mr Kwinter for his grammatical points and points of accuracy that helped get us through.

There are a number of people who participated in this review. It's no secret that the on one side 17 years and on another side 44 years that it's taken for this piece of legislation to come to fruition has involved a number of people.

I'd like to thank Jonathan Guss; David Guiney, the legal counsel for Credit Union Central of Ontario; Pierre Lacasse, directeur général; Daniel Brault—I'm sorry if I've mispronounced your name—from the caisses populaires; Michel Paulin, the directeur général and his staff from L'Alliance des caisses populaires; Danielle Morin and Joanne Brunet, as representatives of the association of credit unions and the unaffiliated credit unions.

As a note of sadness, Gary Gillam, who passed away last December but who spearheaded the industry review: I'd like to place a posthumous thanks to him and his family. Perhaps we can make arrangements to have this sent to his family.

Of course, ministry staff: Imants Abols; Harvey Glower, who is leaving the ministry to assume a new role as vice-president of the Ontario Development Corp; Terry Campbell; Andy Poprawa and OSDIC—the 1% solution was quite appreciated; the staff of the Ontario Securities Commission—Joan Smart; Linda Fuerst; Philip Anisman, who's a member of the private securities bar; and Marilyn Dasil from the ministry.

Last but not least, the folks who have waited 44 years for the business to be done, keeping in mind that it was an NDP government that did the financial services review: Glen Johnson of the Ontario farm mutual association and those from the life underwriters and insurers who have contributed to this worthwhile project over the years.

Thank you very much. We've made history today.

**Mr Sutherland:** I want to thank all the members of the committee and the cooperation of the opposition. I thank you, the clerk and legal counsel, for helping us move through this in a very effective and efficient manner as well. It was greatly appreciated.

**The Chair:** If there are no further comments, I would certainly like to conclude by saying thank you to all of those people who assisted the committee in getting to this point, including the technicians, Hansard, and certainly the clerk, Lynn Mellor, and Russell Yurkow.

The committee stands adjourned until the call of the Chair.

The committee adjourned at 1706.











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### STANDING COMMITTEE ON FINANCE AND ECONOMIC AFFAIRS

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Prince Edward-Lennox-Hastings-Sud ND)

\***Vice-Chair / Vice-Président:** Wiseman, Jim (Durham West/-Ouest ND)  
Caplan, Elinor (Oriole L)

\*Carr, Gary (Oakville South/-Sud PC)

\*Haslam, Karen (Perth ND)

\*Jamison, Norm (Norfolk ND)

\*Johnson, David (Don Mills PC)

\*Kwinter, Monte (Wilson Heights L)

\*Lessard, Wayne (Windsor-Walkerville ND)

Mathysen, Irene (Middlesex ND)

\*Phillips, Gerry (Scarborough-Agincourt L)

\*Sutherland, Kimble (Oxford ND)

\**In attendance / présents*

#### **Substitutions present / Membres remplaçants présents:**

Elston, Murray J. (Bruce L) for Mrs Caplan

Hayes, Pat (Essex-Kent ND) for Mr Jamison

Owens, Stephen (Scarborough Centre ND) for Mrs Mathysen

#### **Also taking part / Autres participants et participantes:**

Ministry of Finance:

Abols, Imants, legal counsel

Bythell, Ann, legal counsel, Ontario Insurance Commission

Glomer, Harvey, manager, financial and business standards, credit unions and cooperatives branch

Owens, Stephen, parliamentary assistant to the minister

Smart, Joan, vice-chair, Ontario Securities Commission

**Clerk / Greffière:** Mellor, Lynn

**Staff / Personnel:** Yurkow, Russell, legislative counsel





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## Legislative Assembly of Ontario

Third Session, 35th Parliament

## Assemblée législative de l'Ontario

Troisième session, 35<sup>e</sup> législature

# Official Report of Debates (Hansard)

Tuesday 21 June 1994

# Journal des débats (Hansard)

Mardi 21 juin 1994

**Standing committee on  
finance and economic affairs**

Budget Measures Act, 1994

**Comité permanent des finances  
et des affaires économiques**

Loi de 1994  
sur les mesures budgétaires

Chair: Paul R. Johnson  
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Président : Paul R. Johnson  
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## LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON  
FINANCE AND ECONOMIC AFFAIRS

Tuesday 21 June 1994

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DES FINANCES  
ET DES AFFAIRES ÉCONOMIQUES

Mardi 21 juin 1994

The committee met at 1602 in committee room 1.

## BUDGET MEASURES ACT, 1994

**The Chair (Mr Paul R. Johnson):** The purpose of our meeting today is the organization of Bill 160, An Act to amend certain Acts to provide for certain Measures referred to in the 1993 Budget and for other Measures referred to in the 1994 Budget and to make amendments to the Health Insurance Act respecting the Collection and Disclosure of Personal Information.

I advise the committee, first of all, that it's understood by the Chair that the critics from the official opposition and the third party will be making some statements and the parliamentary assistant to the Minister of Finance will be making a statement. We'll go first to—

**Mr Kimble Sutherland (Oxford):** Sorry, Mr Chair, do we not have to deal with the organizational issues first?

**The Chair:** Yes, I'm sorry. You're absolutely right, Mr Sutherland. We have to deal with the organization of Bill 160. Any comments with regard to how we're going to deal with Bill 160?

**Mr David Johnson (Don Mills):** Sure, I've got comments. I guess I'll be brief on these comments because this is just, as I understand it, the organizational part.

There are a number of aspects to this bill. There is, of course, the corporate filing fee which we feel is of interest to a number of companies and a number of non-profit organizations that will be charged through the province of Ontario—organizations, we suspect, such as perhaps the Canadian Federation of Independent Business, maybe the Ontario Chamber of Commerce, I'm not sure. There may be a number of organizations as well as individual businesses and non-profit organizations that would be interested in speaking to this matter.

In addition, there's the portion of the bill that deals with the public service pension plan. It's my suspicion that there are members of that plan who, since they're suing the government, may also have some interest in terms of speaking to this committee on the bill.

I have a letter from the Ontario Association of Correctional Managers, for example, who are involved with the bill, and I believe they would like the opportunity to speak on it; the Ontario Provincial Police, probably; AMAPCEO, I believe is the name of the organization who are representing the non-union people, who, undoubtedly, would be interested in speaking to it. We have correspondence from the public school boards of Ontario indicating their interest in this bill, and I suspect the separate school board may have an interest in speaking to

this as well. Indeed, there could be other aspects of the bill that various organizations may wish to speak to.

So, consequently, I have a motion that, if it's in order, I'd put forward, which calls for public hearings to take place and would allow the corporations, groups etc that I've referred to and others to make deputations and to be heard before this committee.

I move that the standing committee on finance and economic affairs schedule three weeks of public hearings on the matters and measures proposed and provided for in Bill 160, and that following the public hearings the committee schedule one week of meetings for clause-by-clause review of the bill.

**Mr Sutherland:** Is that three plus one or just three?

**Mr David Johnson:** Three plus one.

**The Chair:** Mr Johnson has moved a motion. Is there any debate on the motion?

**Mr Gerry Phillips (Scarborough-Agincourt):** Just to share some similar concerns, as we debated second reading of the bill, I think the members know that our caucus had some significant concerns about several aspects of the bill. I think all of us would acknowledge this is a huge bill we're dealing with here that impacts on a whole bunch of different areas in very major ways.

Certainly the public service pension fund is one that I think deserves a good public hearing, primarily because we're talking about some fundamental change in it: We're talking about a three-year holiday; we're talking about \$1 billion in reduced payments into the fund over what had been planned; we're talking about, I think, 40,000 retirees who are being put into one plan and we just have not had a chance to hear from the various groups on it. But that's not the only part of the act where we've had people raising issues with us.

The labour-sponsored venture capital corporation one: I think the moves that are planned are good, although we've not had a chance to hear from some of the people who may be impacted by it. But I think the tax break on these plans is in the neighbourhood of \$60 million or \$70 million a year, if I'm not mistaken, and I think we should know where the benefits of it are going.

Then the Corporations Information Act, as Mr Johnson pointed out, we've had some concerns about the requirement for the annual filing fee and whether or not that's value for money.

Then the whole issue on the health one of the accommodation copayments for psychiatric patients, just where is the government heading on that? What's the rationale for a copayment on psychiatric patients, and is that

something that you then begin to say, "If you're in a traditional hospital, a conventional hospital, is the government also thinking of looking at copayments there?"

I think the problem is trying to deal with a bill this large in this short a time frame where so little opportunity for public input has been provided that I have some support for the motion that Mr Johnson is preparing.

**Mrs Elinor Caplan (Oriole):** I'd like to add just a few comments to those of my colleague. While I agree with everything that he has said, I think there are a number of groups and individuals that are not aware of the implications of the legislation. I also found it troublesome that an omnibus piece of legislation would contain so many significant policy issues from so many ministries where we really had not had any debate or discussion. Some of the ones that Mr Phillips had pointed out I think are quite obvious, and we haven't heard from any of the advocates or organizations that frequently speak for psychiatric patients in this province and to know and to understand the rationale of the Ministry of Health and the government for moving in this direction.

1610

I can remember that we've always had a situation in the province where psychiatric patients received a comfort allowance from the province. On this policy, I cannot recall any thoughtful debate or discussion or what the implications would be or what the impact might be on the lives of those people who are incapacitated and in Ontario's institutions. I think it would be very important for those individuals who speak for people in the institutions to have an opportunity to come before the committee to discuss those provisions.

I've had representations from businesses which want to have foreign expertise, workers, come to the province of Ontario on contract for a period of time, as the multinationals frequently do, and are very concerned about the implications for the families of their workers given the new definition of "resident" that's contained in this piece of legislation. There have been some thoughts that the government's moves would not only be contrary to other policies of the government, but could well be defeated on a charter challenge on the basis of how you treat people who live and work and pay taxes and by any other definition are resident in Ontario.

The fact that you would cover the worker but not the family is a very important and serious policy issue, but it will also make it very difficult to attract people to come and work for a short period of time in the province of Ontario and could well affect our competitiveness. I'd like to hear from some of the companies which have concerns about that. This committee is the place for us to have an opportunity to hear from them about those particular changes to the Health Insurance Act.

I was talking to someone recently who said they'd had inquiries about changes to the Unclaimed Intangible Property Act. When I spoke in the House and mentioned that this was included in this legislation, my phone rang within an hour of them hearing that, saying: "I haven't been able to get any information on that. I've been asking questions. Here it is in this legislation. I'd like an opportunity to come to the committee to get clarification what

exactly is happening." So I think there are a number of issues. I've heard from the management group within the Ontario public sector, those who have formed their own organization—AMAPCEO is the acronym, I believe—who have concerns about the moves the government is making and the lack of consultation as they set up the OPSEU plan separate. They've expressed real concerns about what will happen to their pension plans and their interests and the costs that will accrue to them. The opportunity for those representatives to come before this committee is very important.

I note, and perhaps it happened before I got here, that there was an agreement to take the Unclaimed Intangible Property Act section out of the bill. The fact that it's been withdrawn is important, because if this hadn't been mentioned in the House, if we hadn't had a chance to talk about it, if people hadn't heard about it, we would never have agreed to withdraw it, to allow for the kind of consultation that has resulted in the withdrawal of that section of the bill. I think it was probably the individuals who contacted me to say they were pleased that this was raised who then raised the issue with the government and the ministry that encouraged them and got them to agree to withdraw those sections.

I'm not going to go through each and every one of the policy issues contained in the bill and in the legislation at this point in time, but I would say that it's an important opportunity for people to have, to be able to come to committee to express their concerns about the policy implications of a major piece of legislation that is as broad-ranging as this one.

So I would very much support public hearings on this piece of legislation in the hope that we're not encouraging the kind of undemocratic, swift passage of legislation without due process.

**The Chair:** Further debate?

**Mr David Johnson:** Are we going to hear from the government?

**The Chair:** If the government chooses to say something, they will, and if they don't then that's—

**Mr Gary Carr (Oakville South):** They're usually so talkative.

**Mr David Johnson:** Yes, in the House.

**Mr Carr:** I wonder if we could egg them into saying something.

**Mr David Johnson:** While the government is considering their response to this request, I guess I would ask them to consider if there's an aspect of this bill that is urgent at this point, that couldn't go through the scrutiny of public debate. I think there would be interest, as a number of the members have indicated, on several aspects of this bill, which even without the intangible assets, still contains, what, about 16 different parts? I look at the Loan and Trust Corporations Act that's involved here and I suspect there may be input on that. There might even be a little bit of input on the Ontario home ownership savings plan change, as positive as that is. Who knows? There may be some comment on that portion.

So there could be a number of different portions, and



I'm a little hard-pressed to see what the urgency is in the bill that it couldn't go through public debate and then be considered in the fall, when undoubtedly we will be reconvening. I don't think there would be any harm done in any aspects of this bill. If there would be harm, I would certainly be very amenable to hearing where the harm would be.

So perhaps with that comment I could provoke some discussion from the government side. No? Not a word. What a bunch.

**The Chair:** Is there any further debate on this motion? Seeing none, shall the motion carry? All those in favour? All those opposed? The motion is defeated.

**Mrs Caplan:** The motion to have public hearings has been defeated? Is that correct, Mr Chairman?

**The Chair:** The motion that was introduced by Mr Johnson has been defeated. That's right, Mrs Caplan.

**Mr Sutherland:** Given that the previous motion has just been defeated, I'd like to introduce a new motion to be debated. That motion is that the committee not proceed further with consideration of Bill 160, the budget measures act, and that the committee report it back to the House at this time.

The reason I want to bring this motion on to the floor and have some discussion is there are some reasons for having this bill go right back to the House and having it passed before the end of this session. There are significant financial implications should there be a significant delay of the bill in terms of not being able to be passed before the end of the session. A lot of that does have to do with some of the savings that will come about as a result of the negotiations with OPSEU in terms of the pension savings, and we're talking a significant amount of dollars here if there was a delay. Given the fact that the House will probably be rising in a few days, there would obviously not be time for this committee to consider that bill and still achieve those savings. So I have put forward that motion and I look forward to comments.

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**The Chair:** Thank you. I will just inform the committee that the bill is in order and it is debatable but may not—

**Interjection:** The motion.

**The Chair:** The motion, rather; my apologies.

**Mr Sutherland:** We hope the bill's in order too.

**The Chair:** The motion is in order. It is debatable but is not amendable. So I would ask the members if they wish to contribute to the debate.

**Mr Phillips:** I'll start. In terms of the sense of urgency around the financing, all of this can be retroactive in that the government, I think when it dealt with the teachers' pension, actually went back to a previous fiscal year—the books had already closed—and essentially withdrew money from the pension fund. So I honestly don't think there's a problem on the financial side, because we could very easily deal with this early in the fall and the government would be able to get its money retroactively. So I don't think that's the argument.

I do think there are some aspects of this bill that do

merit further exploration and debate, including the ones I talked about earlier on the pension fund and getting some of the affected people in here to comment on how they see it impacting on their pension, to get some of the people who are going to be impacted by the changes in the whole Health Insurance Act and get their comments on it. In the final analysis, I guess, the government could do whatever it wants and probably will, but in terms of a good public policy approach, it's unfortunate we're dealing with something this complex and all-encompassing without ever really giving the public any opportunity for any input, other than trying through individuals to have their voice heard.

**Mr Monte Kwinter (Wilson Heights):** It's unfortunate that the government has taken the position it has, because there really are some concerns. There are some concerns that should be addressed, and I think this is a bill that is all-encompassing and very, very far-reaching.

To give an example, in just one particular section that deals with the Loan and Trust Corporations Act, the industry has some serious concerns. They've asked for and they thought they would get a chance to come forward and put forward a case to make some certain amendments, for example, to amend the definition of "child," which means "with respect to a restricted party, a person under the age of 18 years."

The rationale is that this amendment eliminates the problem of a married child of a director in good faith entering into a loan transaction with a corporation. The existing prohibition against loans to married children of directors is difficult to police. In any event, it's not based on sound logic, and not only that, but this proposed amendment, if they had a chance to argue it, would actually harmonize with subsection 474(c) of the federal act.

There are three other instances just like that. For example, they would like to see a new subsection 29(1) included by adding the following subsection:

"Where a registered corporation proposes to amalgamate with one or more corporations and none of the corporations are provincial corporations, then an application for initial registration under subsection 31(1) must be submitted to the superintendent."

This is a housekeeping amendment. I don't think it's in any way controversial. It was brought to our attention by finance policy officials, and to not allow that to at least be brought forward and debated so the merits can be pointed out to the committee I think is unfortunate.

I don't want to take up too much time but there are just two other ones that I would like at least put into the record. One is that section 141 of the act be amended by adding a new subsection 4, and this part does not apply as to prevent an amalgamation between restricted parties that is subject to approval under section 23.

What this really does is it reduces the number of approvals required for an amalgamation between restricted parties. It really is a matter of streamlining the process and eliminating some of the red tape. Again, absolutely non-controversial. It's just something that makes eminent sense.

The last one that I'd like to bring to your attention is



an amendment to clause 142(1)(b) of the act so that it is repealed and the following clause substituted, and that is:

"To make a loan to any director, officer or employee of the corporation, the spouse or any child of a director or officer of the corporation or any relative of a director or officer of the corporation or of the spouse of a director or officer of corporation, if the loan

"(i) is not a mortgage loan upon real estate or a commercial loan; and

"(ii) is not prohibited by this act by the regulation."

Again, the rationale is that this amendment would permit personal loan types of transactions for directors such as chequing overdrafts and credit cards. The regulations made under the act can be amended to limit the amount of such loans, as is the case for employee loans.

What it really means is that, because you're a director, you shouldn't be penalized from having access to the kinds of service that everybody has access to. You shouldn't have an undue benefit, but on the other hand, you shouldn't be penalized. You shouldn't be asked to be a director of a corporation and, because you are a director, you cannot have the same access that anybody else can.

I think that's unreasonable. I admit there should be provisions that, because you are a director, you don't get special treatment, and that you can abuse it, but surely you should not be precluded from having the same rights.

These are just examples of some of the amendments of just one section. These are areas of concern. The whole intent, it would seem to me, of this new legislation is to in fact streamline the procedure, eliminate some of the red tape, deal with areas that were covered in the budget, but surely, as we have seen in many other initiatives that the government is proposing, to make it easier and make it more user-friendly for some of this legislation to be applied.

With that, I'd just like to see that on the record, and I appreciate your accommodating me.

**Mrs Caplan:** I'd like to go on the record as saying that I'm disappointed the government has taken the position that it's not going to permit any public hearings or discussions on this significant budget bill. As we've pointed out, there are numerous significant public policy issues which have not been given the kind of public scrutiny, discussion or debate which I think democracy requires.

I don't want to sound like I'm lecturing the government, because I'm not. I feel very strongly that government must be as open and as accountable to the people it governs as possible. I also believe that democracy is about consent of the people to be governed. In order to have that consent, then they must be informed and they must have their say. From my experience, the public hearing, participatory, democratic process is as important as the public policy result. If you're going to have support for the kinds of democratic institutions, then I think people have to know that there is an opportunity for them to participate. When you close the door, you do an injustice to all of us who serve in this Legislature, when we have to go back and report to our constituents that

debate was not possible on important public issues.

I'm disappointed because I frankly believe that this bill could go forward in a way which would not in any way hamper the fiscal plan of the government. As Mr Phillips pointed out, there are provisions in the bill which could be retroacted to the date of the budget, as most budget items usually are, and that is the practice, the tradition and the history of budgets. While we may all argue about how important it is to deal expeditiously with legislation, and I've argued that and I believe it is, "expeditious" does not mean cutting off the public's right to be heard and cutting off due process and cutting off debate.

1630

I would just like to state clearly that I believe we have the time, without any detrimental effect on the government's fiscal plan as a result of discussing these measures over the summer and coming back and dealing with these matters early in the fall. The decision that the government has made will make people more cynical, more sceptical, and make them feel less that they can participate in an open and democratic process, and I think that tarnishes us all.

**Mr David Johnson:** I hardly know what to say. The government has obviously made up its mind to railroad this through, so we're wasting our time. When I came here today, I asked Mr Kwinter, "Are we simply wasting our time here today?" Maybe he was charitable; he didn't say, "Yes, we are." But obviously we are, because the decision was made. The government didn't even respond to my motion other than to put this forward. I hope we can provoke a little bit of response out of them.

I have to say that the rationale for not having public hearings is so thin that it's insulting to the members on this side. To say that the government is going to be saved this money is ridiculous. That's to imply that the money will never be spent, that if we only move today, the \$900 million to \$1 billion dollars in terms of non-payments to the pension plan is not going to be deferred; it's never going to be made. It's going to be saved. That's what "save" means.

Aside from the fact that it could be retroactive, as Mr Phillips has pointed out, there's an unfunded liability of somewhere around \$2.5 billion in this fund. This money has to be paid. It's simply being deferred. Some of it is against that unfunded liability; some is to meet current requirements. But in the end, when we're dealing with an unfunded liability of \$2.5 billion, there's going to be this amount of money and a great deal more that's going to have to be paid. It's a question of over what period of time it's going to be paid.

The measures here today will keep in line, I guess, a 40-year payment schedule of that unfunded liability. Had the money we're talking about here today, for example, been put against the unfunded liability, it would have reduced the period of time to 15 years. Anybody who has a mortgage knows that every investment counsellor will tell you to pay off your mortgage as fast as you can, because that's how you get ahead. But here we are, according to the parliamentary assistant, going to save this money. That's just insulting. We're not saving this money; we're just spending it in a different fashion.



I suppose if it was just us on this side calling for the public hearings, then the government would have every right to ignore us. But when I hear from the Ontario Association of Correctional Managers, for example, in their letter to the Honourable Brian Charlton dated June 14 of this year—apparently they must have listened to Mr Charlton take place in the second reading debate on Bill 160: “It was interesting to listen to your comments last evening during the debate on Bill 160. You stated that the government has offered to meet with the remaining members of the public service pension plan to discuss how that plan should continue to be administered. To date, we have not yet received such an invitation.”

So here’s an association representing 700 members who have not been party to this discussion at all affecting their future. I mean, words fail when we’re talking about the pension plan of these people. They’re being treated worse than second-class citizens. They should have an opportunity to speak on their pension plan to their members, not only to the Chair of Management Board, but to come and speak to us.

“When our association learned of the secret negotiations and agreement with OPSEU to split the pension plan, we wrote to your deputy minister, Val Gibbons, on April 21 to express our dismay and frustration with the failure of your government to abide by its commitments and stated principles to treat all employees fairly and equally. To date, we have not yet received a response.”

It just baffles me. I don’t understand.

The Ontario Provincial Police are upset by this; the Association of Management, Administrative and Professional Crown Employees of Ontario, that is, AMAPCEO, has stated that it feels the split is unfair. They have indicated that some \$150 million to \$250 million of hard assets have been inappropriately directed through this particular split. They are, as I understand it, filing a court case, which is probably under way right now. Maybe in view of that court case, perhaps they couldn’t come to speak, I don’t know, but obviously they want to speak to the government. They want to speak to somebody about their pension plan.

I would certainly like to give them, the OPP, the Ontario Association of Correctional Managers and anybody else—there’s even a letter that I’ve got from some OPSEU members who feel this is an inappropriate way to go, and they’ve been left out in the cold. I guess their management has made this deal. Perhaps this has been addressed by now. I don’t know. It’s dated May 5, 1994. They’re expressing a great deal of unhappiness about the whole split and they’re recommending that their members go against it in a two-page summary. So there’s that aspect. I can’t believe that the government wouldn’t allow those people to have a voice in their pension, which they’re depending on for the future. It just astounds me.

Then to speak to some of the other issues, some members have addressed some of them. I’ll just address two others then, in view of that, because we’re wasting our time here anyway.

I do have a letter from the Ontario Public School Boards’ Association. They say that their association “is

concerned with the government’s intention in Bill 160 to change the method of sharing assessment for publicly traded share capital corporations and non-share capital corporations to an enrolment basis. Rather than have this measure included in the omnibus government budget bill, OPSBA urges that part III of Bill 160”—that would be the part that deals with the Education Act—“be referred to committee of the Legislature for full review and public discussion.” That’s the Ontario Public School Boards’ Association. They’re asking for public discussion, and I’m sure the separate school system would equally wish to have public discussion.

We can avoid this issue. I know it’s a tough issue. Some of these issues are tough issues and it sure would be nice I guess, if you were a government member, not to have to get embroiled in it. Frankly, it’s going to put everybody around this table in an uncomfortable position, to have to make decisions and listen to all sides, and there certainly will be different sides, but to deny these people representing the public school boards of Ontario the right to come in and talk about how they’re being funded, I just can’t understand it. I don’t know what else to say.

Again, in their closing comments they say they strongly recommend that it be referred to committee for further review and public debate, “so that all are aware of its intent, the impact on all publicly funded boards and the potential impact on students and taxpayers.” They have to deal with taxpayers at the municipal level. They have to be able to make their own plans and understand what’s going to happen. They have to be able to explain them to their taxpayers. It’s going to be very embarrassing to them, when this comes up, to have to admit they had no input into this, no say, weren’t provided with any kind of opportunity. It was just rammed right through on them. It’s a very uncomfortable position, I’m sure, for them to be in.

The corporate filing fee—I’ll just mention it again. I have a couple of letters I just pulled off the top from people in various situations; one from Bobcaygeon that is a non-profit. This gentleman entitles his business, I guess I’ll call it, “including our modest, non-profit environmentally sound seniors’ initiative,” which up to now has processed each demand to the letter of the law, while they’re being nicked with a \$25 fee for this non-profit organization, and he wonders why this is.

I suspect there’ll be many, many people across the province of Ontario who are going to be nailed with that \$25 fee in the non-profit sector and who are going to wonder the same question and might indeed wish to come to this committee and have their questions answered.

A gentleman from North York, Ontario: “Apart from the overkill consequences of dissolution”—so if they don’t pay their fee, they’re dissolved—“for non-filing, the other point of dispute is the fee.” He was writing to one of our members and he questions the authority to do this, and I’m sure he would like to see some further discussion and perhaps have an opportunity to appear before the committee.

I have a couple of others, but I guess I’m wasting my time. I’ve never been involved with a process that didn’t

let people come and speak and people whose lives were affected by legislation. I just don't understand it, Mr Chairman.

**The Chair:** Is there any further debate on Mr Sutherland's motion? Seeing none, I'll call the question.

All those in favour of the motion? All those opposed? The motion is carried.

**Mrs Caplan:** Could I request a division?

**The Chair:** All those in favour?

**Ayes**

Haslam, Jamison, Lessard, Mathysen, Sutherland, Wiseman.

**The Chair:** All those opposed?

**Nays**

Caplan, Carr, Johnson (Don Mills), Kwinter, Phillips.

**The Chair:** Mr Sutherland's motion was that the committee not proceed with Bill 160 and the bill be reported to the House. The carrying of that motion would mean that the purpose of this meeting then has been concluded and that the Chair will report the business of this committee to the House as per the motion.

Motion to adjourn? All in favour? Opposed? Carried.

This committee is adjourned until the call of the Chair.

The committee adjourned at 1644.











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### STANDING COMMITTEE ON FINANCE AND ECONOMIC AFFAIRS

**\*Chair / Président:** Johnson, Paul R. (Prince Edward-Lennox-South Hastings/  
Prince Edward-Lennox-Hastings-Sud ND)

**\*Vice-Chair / Vice-Président:** Wiseman, Jim (Durham West/-Ouest ND)

\*Caplan, Elinor (Oriole L)

\*Carr, Gary (Oakville South/-Sud PC)

\*Haslam, Karen (Perth ND)

\*Jamison, Norm (Norfolk ND)

\*Johnson, David (Don Mills PC)

\*Kwinter, Monte (Wilson Heights L)

\*Lessard, Wayne (Windsor-Walkerville ND)

\*Mathyssen, Irene (Middlesex ND)

\*Phillips, Gerry (Scarborough-Agincourt L)

\*Sutherland, Kimble (Oxford ND)

*\*In attendance / présents*

**Also taking part / Autres participants et participantes:**

Sutherland, Kimble, parliamentary assistant to Minister of Finance

**Clerk / Greffière:** Mellor, Lynn

**Staff / Personnel:** Campbell, Elaine, research officer, Legislative Research Service





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## Legislative Assembly of Ontario

Third Session, 35th Parliament

## Assemblée législative de l'Ontario

Troisième session, 35<sup>e</sup> législature

# Official Report of Debates (Hansard)

Thursday 1 December 1994

Standing committee on  
finance and economic affairs

Securities Amendment Act, 1994

Chair: Paul R. Johnson  
Clerk: Lynn Mellor

# Journal des débats (Hansard)

Jeudi 1 décembre 1994

Comité permanent des finances  
et des affaires économiques

Loi de 1994 modifiant la Loi  
sur les valeurs mobilières

Président : Paul R. Johnson  
Greffière : Lynn Mellor

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**1944–1994**

*50<sup>e</sup> anniversaire*

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## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
FINANCE AND ECONOMIC AFFAIRSCOMITÉ PERMANENT DES FINANCES  
ET DES AFFAIRES ÉCONOMIQUES

Thursday 1 December 1994

Jeudi 1 décembre 1994

*The committee met at 1000 in room 228.*

SECURITIES AMENDMENT ACT, 1994

LOI DE 1994 MODIFIANT LA LOI  
SUR LES VALEURS MOBILIÈRES

Consideration of Bill 190, An Act to amend the Securities Act / Projet de loi 190, Loi modifiant la Loi sur les valeurs mobilières.

**The Chair (Mr Paul R. Johnson):** The standing committee on finance and economic affairs will come to order. Today the business of the committee is Bill 190, An Act to amend the Securities Act. The members of the committee will note that they have an agenda placed before them. We have witnesses coming before the committee this morning and this afternoon, and at 4:30 this afternoon we will consider clause-by-clause consideration.

There will be a presentation this afternoon at 3:30 pm by Mr Philip Anisman, barrister and solicitor, and you have received in your offices a copy of that presentation, quite a substantive presentation, as I understand it.

Also, I'd just like to remind committee members before we start that we will be sitting in the intersession to examine pre-budget consultations, and that information will be coming soon to the members of the committee.

C.D. BRUNER

**The Chair:** At this time I'd like to call Mr C.D. Bruner to come forward, please. Mr Bruner, please make yourself comfortable. Get yourself a coffee or a glass of water, if you wish. Whenever you're comfortable you may proceed.

**Mr C.D. Bruner:** Members of the committee, I think it's important that each of you understands why I'm expending the time and effort to appear in front of this committee. This is no joy for me. While I do occasionally work with public companies, I have only a passing knowledge of the Ontario Securities Act. My dealings with the Ontario Securities Commission have been, thankfully, limited. The reason I'm here is my anger at seeing what I believe to be manipulation of the facts, manipulation of the process and a resulting system that will be inequitable and unjust.

Let me start with the manipulation of the facts. Each of you has been undoubtedly briefed by the OSC or the Ministry of Finance. You've been told how urgent it is to pass this bill and how the Ainsley case has in some manner destroyed the ability of the OSC to operate. This is pure fiction. Let me provide you with a few facts.

Public companies have continued to respect OSC policies since the Ainsley case. The financial markets have continued to function without any interruption since Ainsley. There has been no evidence to suggest that

Ontario's financial markets have suffered as a result of Ainsley.

The Ontario Securities Commission, with a plenitude of legal talent on staff, knew or ought to have known for the last decade that it has been acting outside the limits imposed upon it by the Securities Act if it believed its policies had the force of law.

It has been over a year since the Daniels task force was struck. Nothing has happened to make this piece of legislation urgent, and it isn't. That is not to say that this legislation isn't important. It is very important that the OSC act in accordance with its legally prescribed mandate and that it be given the powers necessary to perform its function. I am all for giving them those powers, but that does not include giving them the ability to write law. The OSC policies are not law; they are simply the OSC's interpretation of the statute and its regulations.

The Ainsley case did not in any way make these policies any less enforceable than they already were. In fact, OSC policy 1.1 specifically states that the OSC policy statements "do not have the force of law and are not intended to have such an effect." The OSC did not lose or gain jurisdiction in the Ainsley case; the OSC didn't have the jurisdiction in the first place. These are the facts.

Here is one additional fact for you to ponder. In the briefing notes issued to each of you by the OSC and the Ministry of Finance it's proclaimed in big, bold lettering that Ainsley and Pezim point out the problem. These notes go on to discuss how the courts did not give policies the force of law in these particular instances. Why in the world did the OSC, knowing and having stated in its own policy 1.1 that its policies do not have the force of law, suggest that it had in some manner lost jurisdiction it never had? In a prospectus this would be false and misleading.

I want this committee to understand exactly how much public input was received for the Daniels report, on which Bill 190 is supposed to be based. There were a total of four members on this task force, two of whom work for the Ministry of Finance; that is, 50% of the task force. There were only 33 submissions initially received by the Daniels task force. There was no advertising for comments once the initial draft of the Daniels report was released, other than the OSC bulletin. This further limited public response. There were no public hearings. Comments were requested from industry and professional organizations, but no comments were directly requested from public companies. Of the 33 submissions received, a full 10% were from the OSC itself. An additional 20% of submissions received in the first round were from

regulatory bodies which the OSC oversees. The final report was vetted by the OSC before it was released to the public.

All of this shows that the Daniels report, on which Bill 190 was based, was heavily influenced by the OSC and the Ministry of Finance—very heavily influenced. Mr Waitzer is quoted in the *Law Times* as saying that he had requested that Mr Laughren give the OSC legislative powers as a condition of his employment a year ago. What am I to conclude? While I won't say the Daniels report is unfair and biased, it certainly has that appearance. That is ironic, given the OSC role in ensuring a fair and unbiased market.

One of my major concerns is the fact that in passing this legislation you are setting a significant precedent. You know not what you do. Keep in mind that the only other body in all of Canada that has powers similar to those you're about to give the OSC is the CRTC. This is some precedent you're going to set if you pass this bill: You are going to allow a non-elected body to write law.

It gets worse. This is the same body that has been accused of being heavy-handed, threatening and arrogant. These are the same people who have swayed and tainted the Daniels report and the process upon which it is based. These are the same people who have failed to make a full and complete disclosure as to the urgency of this legislation. You are only one step away from letting the OSC write its own law—one single step.

Remember, the OSC is just chock-full of legal talent, but it is claiming an inability to have statute and regulations passed in a timely manner. Do they understand the legislative process? When was the last time the OSC presented Securities Act amendments to the Minister of Finance for introduction to the House? Bill 190 is simply a means for the OSC to get around its inability to get required legislation through the House or cabinet. As a result of the OSC's inability, you are now considering a bill which would allow it to effectively bypass the House and cabinet. Even the approval of the Minister of Finance will not be required for OSC rules to become law.

Am I to assume that the House, cabinet and the Minister of Finance don't consider securities legislation to be of much importance? I don't believe that's the case. The OSC is unable to function within the system, yet the ministries of the Solicitor General, the Attorney General and Consumer and Commercial Relations, not to mention a multitude of other ministries, are able to function within this same system. What truly scares me is that these ministries now have a precedent to request these same powers to make law that the OSC will have. They all have an equally valid case. After all, to quote the Daniels report, "The salient question is whether for most commission initiatives the supplementary review undertaken by cabinet of regulations justifies the administrative resources and time delays, given the intensity of the demand for cabinet time."

Why not just have all the ministries write their own law? Then we wouldn't need the Legislature or the cabinet, and think of how much more efficient it would be without all of you. We all realize how ridiculous this statement is in a democratic system, but Bill 190 is not

that far removed. Take a closer look. We are changing the system to accommodate the OSC, rather than changing the OSC to accommodate the system. Ask yourself why.

If you doubt the significance of the precedent you are about to set, I challenge you to ask Mr Waitzer, chairman of the OSC. This is an extremely significant precedent. You need to ask yourself and Mr Waitzer what exactly the consequences will be.

As you've all figured out by now, I don't care to see this bill passed in its present form. That is not to say that Bill 190 and, more particularly, the Daniels report don't have some very significant positive elements. They do. The positive elements include requiring the OSC to provide an annual statement of priorities, public hearings for rules—something we didn't get with the Daniels report—a requirement for the OSC to prepare a supporting statement for these rules, detailed notice and comment procedures. All of these would help in opening up the OSC to public input, something that has been sadly lacking. Unfortunately, positive as these elements are, they do not outweigh the negative aspects of Bill 190.

#### 1010

This bill, while full of well-meaning, bureaucratic intentions, lacks an essential element: accountability. Passage of this bill as it now stands will mean that my elected representatives are no longer required for OSC legislation. The OSC will become judge, prosecutor and legislator rolled into one. No one will be accountable for the additional costs except the paying public. This bill must not be passed without these critical areas being dealt with. The end result does not justify this lack of accountability.

While I had hoped that these areas would have been dealt with in a more comprehensive piece of legislation, the Daniels task force, upon which this bill is based, was given only a narrow mandate. The significant issues dealt with by a similar task force in BC could not be dealt with in the Daniels task force due to Daniels's lack of mandate.

As a result, while I don't agree that Bill 190 is proper, I can see my way agreeing to its passage if, and only if, a new task force is struck concurrent with passage of Bill 190. That task force would examine the issues of equity, fairness and accountability not dealt with by the Daniels task force.

Two specific issues that I will be discussing deal with the separation of policymaking and adjudicative roles of the commission, and accountability of the commission to those who pay the fees. Both of these issues need to be addressed by a new task force.

As I mentioned, my first concern is that no elected representatives are being required to approve rules. This is unprecedented to the point that I believe if the citizens of Ontario were made aware that their fundamental right to have elected representatives make law was being abridged, they would scream in anger. This bill abridges those rights.

Amendments proposed for section 143.4 of the Securities Act would allow rules that are proposed by OSC to



become law if the Minister of Finance fails to approve or reject a rule within 75 days. We are not talking about rules that are required urgently, as those that come under section 143.2 would be immediately effective; we are talking about day-to-day rules.

I also wish to mention at this point that the Daniels report does not match Bill 190 in this regard. The Daniels report recommended that when cabinet failed to approve or reject a rule, it would become law within 75 days. In either case I disagree but, given a choice, believe that the Daniels report is a better solution.

Simply put, I did not elect the bureaucrats of the OSC. No matter how well-meaning they may be, I want my elected representatives at some point to approve of rules. I don't want the OSC writing law. I am requesting that not only should the Daniels report be followed with respect to rules coming into force, but that, additionally, either the Minister of Finance or cabinet must approve a rule prior to it coming into force. I want at least one elected representative to approve rules. Is that too much?

While there may be a legitimate argument that cabinet time is too valuable to waste on regulations under the Securities Act, a view which I do not endorse, I refuse to believe that at the very least the Minister of Finance will not spare the time to approve rules prior to submission to cabinet. This is no more acceptable than saying that we should dispense with a defendant's need for a defence because it takes up court time. In both cases it is expedient but leaves out the essential elements of due process.

With the approval by the Minister of Finance of OSC rules, I will at least be able to hold a single elected official accountable. The minister's approval, when combined with the cabinet's ability to review, as suggested in the Daniels report, will still allow rules to be passed in an efficient and timely manner.

My second concern is with respect to the separation of policymaking and adjudicative roles at the OSC. While you have heard that the BC task force issued a similar report, I can assure you that it is not at all the same. In BC the task force dealt with and recommended separation of policymaking and adjudicative roles at the commission. That is a major difference. To put that in plain language, the BC task force is saying that the commission should not be both prosecutor and lawmaker. If this legislation passes the way it is now, the OSC will be judge, prosecutor, lawmaker and jury all rolled into one. That is not my idea of an equitable system of checks and balances.

As I mentioned earlier, the Daniels task force claimed that it was unable to deal with this particular issue as it had not been given the mandate. I am requesting that a task force be struck by this committee to examine the separation of policymaking and adjudicative roles at the OSC.

The third area of concern not dealt with by the Daniels report was the cost of implementing these proposals. There are costs involved and these costs may well be significant. Where's the budget of the anticipated additional costs resulting from Bill 190? I doubt there is one. These costs will be borne by public companies and their shareholders through the payment of fees to the OSC.

As it presently stands, there's little doubt in anyone's mind that the OSC is collecting an illegal indirect tax for the government of Ontario. The revenues of the OSC were in excess of \$48 million in 1993, while costs were only \$19 million. There is no justification for these excessive fees, and they result in market inefficiencies. Based on public comments made by the chairman of the OSC, Mr Waitzer, I believe he would be in agreement. Mr Waitzer also expressed concern about the lack of funding for the OSC; however, I am not prepared to give the OSC a blank cheque. The OSC must be made to account to those who are paying the fees.

I believe the best manner in which to deal with this would be to have the OSC chairman report to a board of governors comprised of public company executives whose role it would be to approve OSC budget requirements and fee schedules. This serves the additional purpose of putting the OSC in touch with its constituency: public companies and their shareholders. As you will know from the Daniels report, very few public companies commented, which speaks volumes about the OSC.

I am requesting that a task force be struck by this committee to examine accountability with respect to the fees and budgets of the OSC.

There are other areas of change that, while not as essential as my three main concerns, I wish to mention. OSC registrants should be notified of substantive rule changes by the OSC in the same manner that public companies provide disclosure to their shareholders. It is not enough to publish them in the OSC bulletin.

The OSC hearing process should be made fair by allowing registrants an opportunity to have their cases heard in camera. Presently, registrants are unfairly penalized if they choose to challenge the OSC, as press coverage, win or lose, has a detrimental effect. Most registrants abrogate the right to a fair hearing, choosing instead to pay a fine in an attempt to minimize press coverage, which can throw their market offering or management in a questionable light. It's already expensive enough for these registrants to fight the OSC without the additional connotations associated with press coverage.

Junior companies are the companies that create new jobs and new opportunities. While investors must be warned of the risks involved, this should not result in junior companies being unable to access the capital markets in Ontario. High risk is not a valid excuse for limiting access to capital. Gambling is legal in Bob Rae's Ontario.

Clause 1.1(a) of the proposed amendments states that the purpose of the act is "to provide protection to investors." While it sounds laudable, I believe this clause should be stricken so that only clause 1.1(b) remains, the fostering of "fair and efficient capital markets." To have a fair market, investors must be protected, but that protection should not be to such an extent that capital markets become inefficient.

In conclusion, I had the occasion to speak with Ron Daniels, the author of the Daniels report. His response to my concerns was that I expected the OSC to continue operating as it had in the past—in a closed, heavy-handed manner. He didn't believe that I'd given due consider-



ation to the fact that the OSC would change under this new system and would be more open to public scrutiny. He has a valid argument and so I reflected on it.

Mr Daniels is right. I am expecting the OSC to continue operating in the same closed, heavy-handed manner that it has in the past. In looking at the record, I have no reason to believe otherwise. The OSC has failed to reach out to public companies or their investors in any significant way. Instead, to quote one of the respondents to the Daniels report, "They act as though they had a manifest destiny mandate."

The OSC needs to be proactive in involving those who should be involved: public companies, their executives and their shareholders. Presently, there are few public companies or public company executives interested in dealing with or being associated with the OSC. The OSC has held itself out to be an arrogant and threatening quasi-judicial body. Who can blame them? The OSC must start a dialogue with its constituency, those who ultimately pay for its existence. To that end, the task force I'm proposing could go to great lengths, given the proper mandate. The OSC must go to greater lengths to reform itself and start a dialogue with public companies, their executives and their shareholders, rather than only the dealers and those who are in the practice of securities law. That would ultimately make the OSC more user-friendly, more accountable and more respected.

To reiterate, I am asking, at a minimum, for two items, if indeed this bill is going to be passed; namely, that an elected representative, whether the Minister of Finance or cabinet, approve all rules, and that a new task force be struck with a more complete mandate to examine the separation of policy-making and adjudicative roles at the OSC and to examine the accountability with respect to costs incurred and fees charged by the OSC.

I provided you a summation of my comments and concerns in written form. Please review these concerns carefully. Do not pass Bill 190 in its present form.

1020

**The Chair:** We have three minutes for questions and answers per caucus. We'll start with Mr Crozier.

**Mr Bruce Crozier (Essex South):** Thank you, Mr Bruner. Very quickly, you may be familiar with the minister's statement to the Legislature with regard to this legislation, in which he said, "There are indications that other provinces will be following Ontario's lead. British Columbia recently announced it intends to provide" such "powers to its securities commission next spring." And, very briefly, when you talk about an elected representative having input or being involved in the rule-making, it says in that same release: "Proposed rules will be subject to a 90-day public comment period, and the Minister of Finance will have the power to approve, disapprove or return the proposed rule to the OSC to be reconsidered." Would you comment on those two excerpts from the minister's statement?

**Mr Bruner:** I believe that BC is following the Ontario lead here again. I think Ontario is following the Securities and Exchange Commission's lead in the US. I don't think any of them are right. I think we have to look

at how we're doing this. We are doing this without an elected person approving.

**Mr Crozier:** Well, the Minister of Finance is an elected person.

**Mr Bruner:** He's not approving the rules. The rules go to him. He can either approve or reject or do nothing. If he does nothing, they become law.

**Mr Crozier:** It says the proposed rules, after being passed by the minister, or presented to them, are subject then to a 90-day comment period. That doesn't satisfy that?

**Mr Bruner:** That does not satisfy that.

**Mr Crozier:** I want to make one comment about capital markets becoming ineffective. I have spoken with some people in the mining and resource industry. They say that it isn't necessarily the restriction that would be imposed by this but that there are other environmental and native rights, a number of issues that affect the investment in Canada and the lack of that kind of regulation in other countries that result in only 20% of the investment funds remaining in Canada. Any comment on that?

**Mr Bruner:** I'm not a securities lawyer. As I mentioned at the start, I've only got a passing knowledge of the Securities Act. This is something you may be able to ask some of the other respondents in more detail. My concern is only that I understand that there is some detrimental effect to the junior companies, and there should not be within the legislation. They should not treat junior companies differently than they do senior companies, or make it at least more onerous on them.

**Mr Crozier:** That must be just about three minutes.

**The Chair:** Thank you. Mr Johnson.

**Mr David Johnson (Don Mills):** Thank you, Mr Bruner. I certainly congratulate you for coming forward and stating your viewpoints.

**Mr Bruner:** I may live to regret it.

**Mr David Johnson:** I know you have the strong impression that your views are in the minority and that's quite probably the case here this morning, but I think it's wonderful that somebody will take the time and effort and have the courage to come forward and state his convictions. I certainly applaud you for that and thank you for that.

You did mention that there was limited input through the Daniels report and I suppose into the situation where we are today. I just would like you to comment on the fact that a great deal of the industry is represented either by the investment dealers association or the securities dealers, I suppose, and they're both here today. They're both going to be speaking to us later today. My impression is that through those two networks, there is a great level of knowledge of what is transpiring through this bill and in fact, while there may not have been a lot of letters or phone calls or whatever, the level of knowledge through those two networks is fairly high. I wonder if you would comment on that.

**Mr Bruner:** Well, I look at this and I have to express some amazement, because I don't think either of those



bodies represents public companies as a whole. As I mentioned, the Daniels report would have been much more effective had there been public hearings. There was only advertising at the start. I was out of the country so I was not able to respond myself. After the initial report had been done and issued, there was no more advertising. Nobody knew about this. At least, I didn't know about this.

The IDA, while representing brokers and dealers, doesn't represent public companies, and it's the public companies who are the constituency here, not the brokers and the dealers. The brokers and dealers are very knowledgeable about the industry and I certainly think their views should be listened to, but they are also under the auspices of the OSC to a large extent, especially IDA.

**Mr David Johnson:** Okay, that's fair enough. Now, one of the central things, perhaps the central thing, was the separation of the policy-making from the adjudicative role, and I suppose the response we may hear later this morning would be that the system that's proposed through this bill is transparent. This is a word I'm beginning to learn what it means now in this context. Apparently what it means is that there is public scrutiny in the first instance of a certain period of time and then there would be ministerial and cabinet scrutiny before a rule came into being. I think the opposite point of view would be that because of this transparency, having the policy-making and adjudicative roles located in one body, ie, the OSC, will work, and I wonder what your comment would be on that.

**Mr Bruner:** Well, if there's truly going to be ministerial or cabinet scrutiny, then they can approve it. There's no reason they could not give positive approval to a rule. If these are just going to them and it's just going to sit there for 75 days, which I believe is the intent here, because people are not as interested in securities legislation as other legislation, then there will be no approval.

**Mr Kimble Sutherland (Oxford):** Mr Bruner, thanks for coming forward today. As someone who, as you said, doesn't have a lot of familiarity, this is obviously a very technical area and a lot of people develop a lot of expertise. But I think on the issue of the accountability to the elected representatives, it may be just a question of the definitions. I mean, you're implying to this committee that because the Minister of Finance isn't saying the words "I approve," then there's no accountability, and I guess I would suggest to you that the way it's set up. If the Minister of Finance doesn't reject them, that in itself is giving the approval and that is the accountability process through the elected official, the Minister of Finance, who has responsibility for the OSC.

**Mr Bruner:** Well, we have lots of legislation that goes through the House yet we have approvals for it. I don't see what the difference is between him saying, "Yes, I've approved of something," and just ignoring it and letting it sit on his desk. All I can see from that is that he's ignoring it. He's not dealing with it. It's going to go its way no matter what happens.

**Mr Sutherland:** Mr Bruner, though, you're implying that the Minister of Finance isn't going to look at or be

made aware of any of the proposed rules put forward by the OSC. I just don't think that's going to be the case. No matter who the Minister of Finance is, he or she is going to look at those rules that the OSC has proposed and make the decision. I mean, if they sat on the minister's desk for 75 days and the minister was not made aware, that could turn out to be very embarrassing for the minister. So I would think that accountability process is going to be there. The minister is going to be sure that they know what is being proposed by the OSC, and therefore you have accountability through an elected representative.

**Mr Bruner:** Then why not sign off on it? Why not say, "I've approved it"?

**Mr Sutherland:** So you just prefer that it's said, that the minister just said, "I approve it."

**Mr Bruner:** I want to see my elected representatives approving it. I want to see one person, I don't care who, but an elected representative, approving it. I do not want even the precedent set of the OSC making law.

**Mr Sutherland:** But I guess the point I'm trying to make is that the difference seems to be you feel that the Minister of Finance has to say "I approve"—

**Mr Bruner:** That's correct.

**Mr Sutherland:** —rather than this process, where if the Minister of Finance is not rejecting it, then they are approving it.

**Mr Bruner:** The minister can still reject, approve, do whatever he wants, but in order for it to become law, the minister should approve, affirmatively.

**The Chair:** I'm sorry, but our time has concluded. Mr Bruner, I want to thank you for making your presentation before the committee this morning.

1030

#### SECURITIES DEALERS SOCIETY OF ONTARIO

**The Chair:** The next presenter this morning is Mr Bryan Finlay, legal counsel for the Securities Dealers Society of Ontario. Please come forward, make yourself comfortable, and I presume it's Mr Harry Bregman, president, as well?

**Mr Harry Bregman:** Yes.

**The Chair:** Please make yourselves comfortable and when you're ready you may proceed.

**Mr Bryan Finlay:** First of all, I would like to say that we appreciate this opportunity to come and meet with you and discuss some of the concerns we have with the proposed legislation. Let me say at the outset that we have filed a written submission with regard to various points. It's a submission by Mr Bregman, the president of the securities dealers society, who's sitting beside me. I do not intend to read from that submission. I want to commend, first of all, that you do read it from beginning to end, but I want to take the time this morning to address what in practical terms we consider the sort of very minimum relief we would ask with regard to this bill.

I don't think there's any doubt in our mind that it appears that this bill is going through and that we have this one day of hearings, hopefully, to get some amend-



ment to it that will serve the public at large. That's what I want to address. I want to address that particular amendment.

If I could ask you, with regard to the written material in front of you, to turn to the third page from the back, you'll see a document that is entitled in dark print at the very top "The Equal Rights Amendment." If you could just look at that, what we are suggesting, what we're asking for, is that with regard to the proposed bill, paragraph 14 of subsection 143(1) be amended by the addition of these words.

The provision as it now stands in the bill, if you turn it up—if you've got a copy of the bill in front of you, could I ask you to turn to page 5 of the bill? If you turn to page 5 of the bill and you go down to item 14, you'll see that the commission is to be given rule-making power with regard to "Regulating trading or advising in penny stocks, including prescribing requirements in respect of additional disclosure and suitability for investment."

What we're asking is for an amendment to that provision that would add the clause that's at the top of the page entitled "Equal Rights Amendment" by adding this language, "but no rule regulating trading or advising in penny stocks shall be made unless it applies equally to all registrants who trade or advise in penny stocks." Then I set out beneath that the rationale, but let me explain to you what the rationale is.

The focus of criticism and discussion concerning the trading of penny stocks is that you are dealing with a highly risky investment and that the consumer should be protected. Now, I want you to think in terms of this bill as being, in so far as this provision is concerned, consumer protection. What we're doing is allowing the securities commission to protect the consumer. What we're saying is, if you're going to protect the consumer by imposing rules on the selling of penny stocks, be sure that you apply it evenhandedly. Apply it not only to the securities dealers, who I represent, whose business is mainly penny stocks, but also to members of the IDA, the investment dealers association, and members of the stock exchange.

Impose it, because if rules need to be passed in order to protect consumers, then it doesn't matter who's selling them. It doesn't matter whether it's Shoppers Drug Mart that's selling the toothpaste or it's the local drugstore on the corner, the same rules as to what goes into that tube should apply across the board.

What the securities dealers are very, very worried about is that, as in the past, in the treatment of penny stocks, they will be singled out and there will be rules imposed upon the securities dealers, who are only one small segment, only seven members, seven companies, whereas penny stocks are traded in vast quantities by members of the investment dealers association. Far more penny stocks are traded by investment dealers than by the penny stock dealers.

We say, be sure to leave the playing field even, because these are the people we compete with, and if the concern of the Legislature is to protect the public, then be sure that the public is protected across the board.

I understand that in the past the commission has come forward and justified singling out the securities dealers on the basis that, "Well, they don't have the same sort of very sophisticated in-house disciplinary provisions that the investment dealers association or the Toronto Stock Exchange have."

That's not the point. That's looking at it from the wrong end. If the purpose is to protect the consumer, then it is that those protections should be applied to whoever is buying the penny stock.

Why I focus on this this morning is because we've got lots of problems with lots of this act, and we've set them out and there's even a constitutional concern, but in the short time that I've got this morning, I really can't engage in a section-by-section discussion on that point. What I want to do as this train goes through is to see if I can't get an amendment that will protect the public, first and foremost, and not discriminate against any one portion of the industry that's out there.

That's the real thrust, and I'd like to engage in a discussion on that, if I can. I understood I had 15 minutes. That's what I want to focus on, and I'd be appreciative now to answer any questions or engage in any discussion, because it's a matter really of great moment for my client.

**The Chair:** Just for your information, Mr Finlay, you can use all of the 30 minutes you're allowed to make a presentation if you wish, but if you'd like to enter into some discussion, we can certainly do that.

**Mr Finlay:** I've put my point out. I want the tube of toothpaste that's going to be classified and protected for the use of the public to be applied—anybody who sells that tube of toothpaste is going to have to apply the same rule or buy the same rules. Therefore, I'd like to engage in any discussion that members might have with regard to that, or any part of the bill, for that matter.

**The Chair:** Very well. As we usually do, we've divided the time, approximately seven minutes now per caucus, and we'll start with Mr Johnson.

**Mr David Johnson:** Thank you very much, Mr Finlay. I suspected that you might focus on that particular section. In terms of the past, is it your view that policy 1.10 would be an example whereby there were uneven rules that have been applied?

**Mr Finlay:** Exactly. Policy 1.10 applied solely to the securities dealers and not, by its express terms, to the investment dealers association or members of the Toronto Stock Exchange, although they trade more in penny stocks than we do.

**Mr David Johnson:** So that's the kind of thing, from your point of view, that should be avoided.

**Mr Finlay:** Exactly. The product is penny stocks.

**Mr David Johnson:** I'm trying to sort this out, because obviously we're getting different points of view and I certainly want to listen to all parties. This day is going to be invaluable, I'm sure.

The chairman of the Ontario Securities Commission has written a letter with regard to—I imagine you have a copy of that particular letter. He'll be making a presentation a bit later, but you won't have the time to go back



and forth. In his letter, commenting on what you're proposing here, and I think I'm taking the right section from his letter, it says, "Any rule relating to trading or advising in penny stocks apply equally to all registrants who trade or advise in penny stocks." He's commenting on that. I think that's the clause you're talking about.

**Mr Finlay:** Yes.

**Mr David Johnson:** And that this could prohibit the tailoring of a rule to meet the specific requirements of junior issuers with the minimum regulation required by the circumstances. I gather he feels there are different circumstances that could arise, and consequently that to be put in a straitjacket of having to have precisely the same rules may not work. I wonder if you would comment on it.

1040

**Mr Finlay:** I saw that provision in this letter yesterday when I saw the letter. I frankly do not know what Mr Waitzer means by that. Let me say this. I've been involved in the litigations concerning policy 1.10 and why there was a difference between the securities dealers society and investment dealers and the Toronto Stock Exchange.

The primary purpose that has been brought out as to why there was a distinction is because the rules and regulations internal to the Toronto Stock Exchange membership and the IDA were sufficient or such that they did not appear to be getting the same amount of criticism from sales that had gone through those particular houses or those particular institutions. I don't know what Mr Waitzer is saying about this, and unfortunately he gets to address the jury last, but I—

**Mr David Johnson:** That's why I thought I'd give you an opportunity now. But since you've raised the issue, isn't it fair to say in all truth that over the years there have been more complaints with regard to penny stocks and perhaps the members you're representing than with regard to the members of the IDA?

**Mr Finlay:** I don't accept that in the sense that I don't know what statistical analysis has been done with regard to complaints received by the IDA or the TSE. We certainly know about the complaints received by the commission, but if you're a member of the IDA and the TSE, the complaints may very well go to those governing bodies. So we haven't had statistical analysis as to how many complaints are received with regard to penny stock transactions that are done through those houses. In order to assist this House with regard to whether there are more complaints from the TSE or the IDA as opposed to the securities dealers, I can't—

**Mr David Johnson:** All right. I may be starting to run out of time.

**The Chair:** You've got just over two minutes.

**Mr David Johnson:** Two minutes. All right. The second part of Mr Waitzer's letter, and I'll give you the opportunity to respond, indicates that, in any event, "This proposal should, in my view, be raised"—"this proposal" I guess being an uneven playing field or what you may feel would be discriminatory practices towards the securities dealers, for example—"and considered in the

context of the commission proposing a rule or policy which gives rise to such a concern if in the view of the registrant the proposed rule could affect them in an unfair manner."

I think what he's saying is that there is a transparent system that's in place: a certain number of days for the public to respond, for the minister to respond. Wouldn't it be the point in time for you to raise it during that process?

**Mr Finlay:** Yes, I see that. By way of an aside, it's interesting that that same logic couldn't be applied to policy 5.2 and therefore take it out of the grandfathering provision.

With that aside, let me say that with regard to this submission, the securities dealers view this as a matter of principle which should find itself in the legislation. You see, there is no logic why, as consumer protection, rules passed to protect the consumer don't apply to anybody who's buying the product. That's a matter of principle. I don't understand why that isn't exactly the sort of proposition that would find itself in the legislation. It should not be left to the commission to decide as a matter of principle, for consumer protection, how it's going to slice that particular loaf of bread. If it's important that a person up in Sault Ste Marie get this information with regard to buying penny stock, it doesn't make any difference whether that transaction is being sold through a member of the IDA or through the securities dealers. That's why I say it should be in the legislation, not left to the rule-making procedure.

**The Chair:** Thank you, Mr Johnson. Mrs Haslam.

**Mrs Karen Haslam (Perth):** Now for a breath of fresh air, because I come at this not knowing probably as much as my colleague Mr Johnson, or even my colleague Mr Phillips. I consider the information I have so far as Investing 101, and obviously everybody else in this room is at Investing 909, so I have some questions, because I am the epitome consumer of penny stock if that's where I want to go, and I don't.

As I understand it, the IDA is self-regulating and the TSE is self-regulating and you are not, so as a consumer I wish that you were a self-regulating body just like the doctors I go to and the health professions that I go to. So if you're not going to regulate yourself, shouldn't there be some regulations and standards set for you? And if that's not done in this way, what about joining the IDA? Can you join the IDA? Can you put in place a self-regulating body?

**Mr Finlay:** Well, first point: The securities dealers have established their own society in order to govern and regulate themselves. That body is not recognized in the regulation or the statute as being what's called a self-regulating society, an SRO, self-regulating organization. Those are the IDA and the TSE; by regulation they're so defined.

So the question is that at the present time the law permits the securities dealers to have their own legislative home. In fact, in order to become a member of the IDA and the TSE, they have to apply to move from one regulatory category to another. Some have made applica-

tion but their applications have not, except for one that was done some time ago, been processed through to an acceptance. It has not been an avenue, one that has in any practical sense been available and has resulted in success.

**Mrs Haslam:** You do believe, though, that there have to be rules and regulations to protect me. You said it doesn't matter—I can't remember.

**Mr Finlay:** It's not the point?

**Mrs Haslam:** Yes, that it's not the point; it doesn't matter. I wonder why you said that. I mean, you do believe in having rules. You do believe that there should be rules for you.

**Mr Finlay:** Yes, sorry. I put it badly. I put it incorrectly and put it badly if I said I didn't believe there should be rules or regulations or whatever. I'm not saying that. I'm just saying that if you're going to impose them—I guess I've really put it badly. If you're going to impose these, impose them with respect to everybody that sells penny stocks.

**Mrs Haslam:** Wouldn't that be double regulating, then? The IDA already have rules and regulations that govern what they do. Wouldn't that be double regulating?

**Mr Finlay:** Well, no, because policy 1.10, which was a policy brought in by the securities commission to regulate specifically the securities dealers as opposed to the IDA and the TSE, imposed requirements on the securities dealers that were far more stringent than the TSE or the IDA. In fact, the securities commission got submissions from the TSE and the IDA not to impose those very rigorous rules on them.

**Mrs Haslam:** Did you make a submission to the task force?

**Mr Finlay:** To which task force?

**Mrs Haslam:** The Daniels.

**Mr Finlay:** Yes, I appeared personally before the Daniels.

**Mrs Haslam:** Was there a—

**Mr Finlay:** There wasn't a written submission, no.

**Mrs Haslam:** Nothing in a written submission.

**Mr Finlay:** There wasn't a written submission but I appeared personally before the commission, and I have—sorry, that's the answer to your question.

**Mrs Haslam:** Okay, I'll pass it to Kimble, and as a consumer I think I'll still wait before I invest in penny stocks.

**Mr Finlay:** When you do, it would be interesting for you to inquire as to whether the rules imposed by the securities commission under subsection (14) apply to that person who's selling it to you, because if it's the IDA or the TSE, it may be that they are not governed by those stringent rules that they wish to impose on us.

**Mrs Haslam:** But there will be rules there.

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**Mr Finlay:** But they may very well be quite of a different order.

**The Chair:** Mr Sutherland, you have three minutes.

**Mr Sutherland:** If I could—

**Mr Finlay:** There are rules that do govern us.

**Mr Sutherland:** Sure. If I could pick up on the discussion, though, you used the terminology "level playing field." Just picking up on that analogy, as a consumer out there, would it have been fair to say, though, before these new rules were put on you, that the playing field in some respects may not have been level because the IDA and the TSE had standards that were up here, without yours, your standards might have been here, and these rules bring those standards up?

**Mr Finlay:** No. There are specific provisions of the act and the regulations which deal with trading in securities. Policy 1.10, if you use your analogy of sort of bringing the glass of water up to level, didn't bring it up to a level; it pitched us far over and imposed rules which, from our submission, were just simply unworkable.

We went to court and fought that issue out. There's been no judicial determination whether in fact, but there's certainly been a very strong issue with evidence led that these provisions that were 1.10 were unworkable from the point of view of the securities dealers.

**Mr Sutherland:** Can I take it, though, that generally you're supportive of the legislation, but you have specific concerns in this provision?

**Mr Finlay:** Let me say this. I'm supportive of the fact that the commission has to be given proper powers to do what it should do so that there is accountability and that rules are rules and policies are policies. I have no problem with that.

I do have a problem with specific aspects of this legislation which in my submission create an argument that it's beyond the power of the Legislature to bring in this particular bill. I could go to particular provisions in it, but as far as, is a bill necessary, do I think the law should be changed, yes, I think the law should be changed.

**Mr Crozier:** Welcome, gentlemen. First, a quick question to Mr Bregman. When was the securities dealers association formed?

**Mr Bregman:** In 1991.

**Mr Crozier:** By this same group that belongs to it now, or has it been added to or have there been dealers who don't any longer belong to it?

**Mr Bregman:** Yes, there have been dealers who no longer belong to it due to the fact of the securities commission penalizing them for whatever the case may be, and it has been reduced down to approximately seven securities dealers at the moment.

**Mr Crozier:** So the securities commission, rather than dealing with the securities dealers association as a whole, if there's a problem, deals with a specific dealer.

**Mr Bregman:** Correct.

**Mr Crozier:** So if the bill passed as it is now, it wouldn't necessarily apply to all in the securities dealers association; it would apply only to those that didn't abide by the regulations.

**Mr Bregman:** No, I think it would apply to securities dealers that deal in speculative securities. There are other securities dealers under the category by the securities commission that deal in either limited market makers or



whatever category they may be in, but they're still a securities dealer.

**Mr Crozier:** The amendment that'd you'd like, the equal rights amendment: Can you point out to me where in the act and/or the proposed bill it says that it does not apply equally to everyone?

**Mr Finlay:** If I could answer that, the discretion given to the commission under subsection (14), which was the section that I took you to on page 5, doesn't require it to be applied generally.

**Mr Crozier:** Where does it say that? You maybe can help me.

**Mr Finlay:** Well, you could go to various sections of the bill which would reinforce the fact that this doesn't mandate that a provision passed need apply to all registrants. The best proof of this is the fact that the chair of the commission is objecting to this amendment because the commission wants the flexibility of being able to target particular segments of the industry. The chair himself is saying, "Don't make this amendment, because we want the flexibility that 14 now gives us."

**Mr Crozier:** But you say, again, just to emphasize briefly, segments of the industry and not individual investment dealers.

**Mr Finlay:** I think it would be tough for them, though maybe not impossible, to identify specific securities dealers and pass it specifically addressed to those one or two. But remember, those securities dealers that are involved in the sale of penny stocks are a very limited number to begin with. There's only seven or eight. I don't know whether I've answered your question.

**Mr Crozier:** Well, we're told that the big investors sell them too, so it's more than seven or eight.

**Mr Finlay:** Oh, yes. But you see, the fear we have, as reflected in policy 1.10, is that the commission said, "We're going to focus on these securities dealers in particular, because we believe, in their trading of penny stocks, they constitute a particular problem," and they bring in these consumer protection guidelines or rules. What we say is: Hold it. Everybody's selling this stuff. Don't nail us.

**Mr Crozier:** Okay. Thank you, sir.

**Mr Gerry Phillips (Scarborough-Agincourt):** This seems to be the one big issue and I just want to make sure I've got it clear. It's probably articulated best in Mr Waitzer's letter to Mr Bregman, on page 4. I think Mr Johnson quoted from it. If I can just paraphrase it, this is the issue, I think:

The securities commission is saying that it needs the flexibility to write the rules and that your recourse then will be, when the rule is issued, you then have a right of appeal to the commission and the Minister of Finance; this is our choice. We can accept the bill as proposed, and your recourse, if you don't like a rule, is you then appeal it. I read in the paragraph there's a bunch of technical reasons why they would prefer that approach.

**Mr Finlay:** Right.

**Mr Phillips:** You're saying that you have a strong preference for the legislation, the act, prescribing more

clearly how the rules will be written, and that's our choice.

**Mr Finlay:** Yes.

**Mr Phillips:** I think you made a reasonable case on your side and the commission has made a reasonable case on its side, so we have that dilemma before us.

**Mr Finlay:** Let me just respond by this. The securities dealers, and I don't think—the representatives of the commission are here behind me. We have been engaged in litigation for a couple of years of a very, very intense sort. I'm just out of the Court of Appeal late yesterday from three days of arguing issues with the commission. It isn't, in my submission, in the public interest that this litigation go on with people attacking each other. What we say is, if this is consumer protection—and it is consumer protection—as a matter of principle, let's make it apply to everybody who sells the toothpaste so that everybody who buys the toothpaste is protected. Don't let's go back to what Mr Waitzer is suggesting, which is, "We're going to pass another rule, we're going to call it rule 1.10 this time and there's going to be this continual allegation and counter-allegation of discrimination." I'm not here asking you which side you fall on in that debate. That's not the purpose. I'm saying this is an issue of principle. This is an issue that everybody who buys penny stocks should be protected similarly.

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You're going to hear from the Investment Dealers Association of Canada, "Listen, yes, we do sell a lot of penny stocks, because that's the evidence, but we don't have the sorts of complaints," and you're going to hear from Mr Waitzer who's going to say, "The commission needs the flexibility to do this sort of thing." I want you to remember that at the heart of this what's at stake is consumer protection. Don't buy into it; say, "If the farmer in Kapuskasing is going to be protected like the suburbanite in Etobicoke, have the same rules apply whoever sells the product." There's no mystery why we're fighting this. Otherwise, they're going to impose rules that will drive us out of business.

**The Chair:** I'd like to thank the Securities Dealers Society of Ontario for making this presentation before the committee this morning.

**Mr Finlay:** I'm obliged.

TORONTO STOCK EXCHANGE

**The Chair:** The next presentation is by the Toronto Stock Exchange, Mr Pearce Bunting, president, and Mr John Carson, director, market integrity. Please come forward, make yourselves comfortable, and if you would identify yourselves for the purposes of Hansard and the committee members, it would be appreciated. Whenever you're prepared, please begin.

**Mr Pearce Bunting:** I am Pearce Bunting, president of the Toronto Stock Exchange. With me is John Carson, who is the director of market integrity for the Toronto Stock Exchange.

John will be making the presentation. However, I wanted to be here to make the point that the Toronto Stock Exchange considers the passage of Bill 190 to be very important. We consider public confidence in our



markets critical, and that the commission should have the power to properly regulate the markets is of great importance.

**Mr John Carson:** As Mr Bunting indicated, we have a vital interest in this bill. We are a self-regulatory organization as well as Canada's biggest stock exchange. Therefore, we're both a participant and a key stakeholder in the securities regulatory system in this province. As such, we are extraordinarily concerned with the gap in the regime that's been identified through the Ainsley decision, which is, namely, that the rules everyone thought were in place aren't there and currently the OSC doesn't have the power to make new ones. As a result, we have been providing extensive input to the Daniels task force since it was struck.

We would agree with some of the comments made earlier this morning that the Securities Act is essentially a form of consumer protection legislation. While the fostering of efficient capital markets is clearly one of the key purposes of the act, we think the fundamental purpose remains to protect investors and to foster fairness in the markets. As an SRO, the TSE actually shares this mission, but we're focused only on the regulation of our own members and our own markets.

The effectiveness of the regulatory system in the province as a whole has a significant impact on investor confidence overall, and of course therefore in the TSE's markets and therefore on our efficiency. In other words, the two basic principles or purposes behind securities legislation are intertwined.

The perceived and substantive fairness of securities markets in the province and in the country remains a critical success factor for both the capital markets generally and for individual markets such as the stock exchange. So we think it's vital that the regulatory system be effective, be responsive and be flexible. To us, that means that rules must be able to be put in place and changed as required; in other words, changed as securities markets change, which they do rapidly.

What are the consequences of not having a regime that's effective, responsive and flexible?

—First of all, a lack of confidence by investors in the capital markets in the province and in the country. That affects not only domestic investors but also international investors who provide much-needed investment in Canadian markets. Securities are now an international business, and once investors lose confidence in a market it's very difficult to regain, as we have certainly seen in other areas of this country.

—A second consequence would simply be abuse of investors in the form of manipulative or fraudulent practices, lack of disclosure or lack of specific rules to govern particular types of transactions that may not be in place or are not covered in the act.

On this point, we would like to make what we think is a vital point, and that is that active enforcement of the rules is necessary. We think that it's crucial to increase the resources of the securities commission, in particular its enforcement branch, which is currently seriously understaffed. Yes, the OSC should be granted the power

to establish rules and standards of conduct, but it's essential that it have the practical ability to enforce those rules.

Currently, the OSC enforcement branch is in the position of only being able to deal with its top enforcement priorities, the most egregious cases. We only have jurisdiction over our own members through our disciplinary process. When other parties outside of the members are involved in violative conduct, we have to rely on the OSC to take action. Many investigations conducted by the TSE dealing with significant problems like insider trading and market manipulation are forwarded to the OSC but simply can't be followed up on because of the lack of investigative and prosecutorial resources.

It's already come up this morning that the gap between the total revenues garnered by the securities commission through registration fees and so on and the actual budget of the commission is large. There's a huge gap there. Ontario investors are paying a fee of 50 cents a transaction, which was supposed to provide revenue to support their role of protecting investors and in effect acting as the market cop. But notwithstanding the need to increase enforcement, that money isn't being earmarked for that purpose. Investors are not getting the protection they've actually paid for. So we urge the government to review the resources that are available to the commission for enforcing its rules.

Getting back to Bill 190, we fully support adoption of the bill, and in particular we support the granting of broad rule-making authority to the commission. We regard this as a limited-purpose bill at this time. The purpose at this point is not to do an extensive review of the principles and policies of the act overall but simply to plug a dangerous gap in regulation that needs to be closed as soon as possible.

The exchange and no doubt other market participants would like to see other changes to the act, but this isn't the time to bring all of those changes forward. Rather, this bill, as I said, has a limited purpose: to ensure that the regulatory protection that investors and market participants thought was in place is in fact in place.

Secondly, we support the principle in the bill of "openness, public participation and certainty in regulation," to quote from the Daniels task force report. These are reflected in some of the provisions that have been noted this morning, including the notice and comment provisions for rule-making, the requirement to provide an annual statement of priorities of the commission to the minister and the opportunity for the public to in fact have input into those priorities.

This bill will introduce a more open and democratic approach to policy-making by the commission compared to what has existed in the past. So in the course of clarifying the OSC's authority, other changes will in fact improve the policy-making process for everybody.

With respect to the need for rule-making authority, the bill sets out a list of subject areas where the commission will be granted rule-making authority. They are broadly cast, which in our view is necessary in order to provide adequate flexibility to the commission. If the subject areas were too narrowly cast, it would really defeat the



purpose of granting rule-making authority since it would probably require a series of referrals back to the Legislature whenever the authority granted for a specific subject didn't in fact cover the kinds of rules that are needed.

Secondly, we think that the bill strikes the right balance between the need for adequate rule-making authority and for checks and balances on the exercise of that authority. We didn't favour the initial proposal in the task force report to give the commission authority to make any rule in furtherance of the policies and principles of the act. Rather, we had stated in our original comment letter that the preferred approach, in our minds, was to set out broad policy guidelines and then to enumerate general areas in the legislation where the commission could make rules, and that's in fact what Bill 190 does.

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A further reason why we are in favour of the rule-making authority is that we think that the regulator must have the ability to respond quickly to market developments. As you've heard, the pace of change there is very rapid. The nature of the markets, their structure and the range of products that are being sold in securities markets as well as the nature of both the investors and the securities dealer participants have changed dramatically, even in the last 10 years. While it generates new opportunities for investors, it also generates new problems and issues for regulators that have to be addressed.

Another important reason the exchange believes that rule-making authority must reside with the commission is that securities regulations are extremely detailed and complicated. They are among the most arcane of government regulations and address a wide range of activities, everything from things such as registration of brokers, to prospectus requirements for the huge number of mutual funds that now exist, to defensive tactics that companies might use when they are a target of a takeover bid. All of this requires a high degree of specialized expertise by people who are familiar not only with the framework and philosophy of the regulations but also with practices in the market. So, of course, with the commission being established as a tribunal to develop that kind of specialized expertise, we think it's appropriate that they be able to use that in making rules.

I'd also like to mention that there are consequences for the national coordination of securities regulation here. If all rules were required to go through provincial legislatures, it would be virtually impossible for the various securities commissions, acting through the Canadian securities administrators, to coordinate policies and rule-making or at least to implement them at the same time.

If this bill is passed and is followed in a number of other provinces, the ability to coordinate rules on a national basis will be significantly enhanced since commissions will be able to adopt rules not only that are uniform, but be able to implement them at the same time. That is important because Canada is really a small marketplace nationally, when considered on an international basis.

To address the checks and balances on the authority that are contained in the bill, we think they will ensure

that the authority that's being delegated won't be abused and that due regard will be paid to the views of the public and interested parties. This is a key point for the stock exchange and for its members. Because people are directly supervised by the commission, we don't want to be part of a process that doesn't allow us and our members a voice in all of the detailed rules that we're going to be subject to. But the checks and balances that we had submitted to the Daniels task force should be contained in the bill are in fact contained in the bill, including the requirement for notice and comment etc. These procedural safeguards are in fact a significant improvement over the current situation.

We also note that recourse to the courts would be available should the commission adopt rules that are beyond its jurisdiction as set out in the bill; in other words, go beyond the rule-making authority that's being delegated. In our view, that's the only ground of appeal to the courts that's really necessary. If a party or group feels particularly aggrieved by the adoption of a rule, they can appeal to the minister to reject it or return it to the commission for further consideration. We think this type of political control will be more effective, not to mention faster and more efficient, than a judicial review based on extensive or nebulous grounds.

We would also like to address the situation in the unlisted stock market, or perhaps the penny stock market, if you will. The exchange is also the operator of the unlisted stock market through a subsidiary company called the Canadian Dealing Network, or CDN, and therefore it is appropriate that we comment on this area. CDN is responsible for operating the quotation and trade reporting system for unlisted stocks and we also carry out market surveillance and trading regulation of the OTC or unlisted marketplace, "OTC" referring to over the counter. However, we don't actually regulate the securities dealers that use that system. Those dealers consist of both our own member firms and the members of the Securities Dealers Society of Ontario, which you just heard from.

The Task Force on Securities Regulation was struck in response to the Ainsley decision, and as you know, that was an action by the SDS group that is active in the unlisted market attacking the OSC's adoption of policy 1.10, which governs how they could sell and market penny stocks. Since we are operating the CDN marketplace, we're very familiar with the contents of policy 1.10 and with the dealers it was designed to regulate, which, again, are those that aren't members of the TSE or the IDA. We are also quite familiar with the ongoing regulatory problems that exist in the unlisted stock market.

Protecting novice investors from marketing abuses in highly speculative or penny issues lies at the heart of the OSC's mandate. The TSE and the Canadian Dealing Network were and are of the opinion that decisive action by the OSC is necessary in this area in order to improve or, I would actually say, completely turn around the fairness of and public confidence in the unlisted market. To put it bluntly, the terrible abuses that exist in certain situations have to be stopped. Only then can this market



become a viable one to facilitate capital raising by legitimate small and startup companies. It isn't now. In fact, almost no public offerings are conducted by companies in the unlisted stock market because the dealers that are members of the Toronto Stock Exchange don't think they can sell those issues to their clients.

For these reasons, we publicly supported implementation of special rules governing the sale of penny or speculative stocks. We don't believe it's possible for the OSC to devise effective solutions to these kinds of problems without the authority to make specific rules governing the sale of these securities. This is precisely the approach that's been taken by the Securities and Exchange Commission in the United States with a fair degree of success over the last few years.

To sum up our submission, we support the bill because:

- It's crucial to plug the serious gap in securities regulation that has been opened up by court decisions.

- We think the most effective way to plug it is to give the OSC rule-making authority.

- In practice, in our view, our members, investors, the exchange and public companies have been operating under the assumption that the OSC does have the power to make policy.

- The rule-making procedures in the bill open up the process, increase the political accountability of the commission and introduce checks and balances on the OSC's authority that don't exist today.

**The Chair:** Thank you very much for your presentation. We have just under four minutes per caucus. We'll start with Mr Lessard.

**Mr Wayne Lessard (Windsor-Walkerville):** Thank you, Mr Carson. From your submission, I take it that when you're talking about consumer protection and public confidence, which are characterized as very important issues, they're enhanced by giving the OSC this rule-making power.

We've heard from Mr Bruner this morning, and I don't know if you were here for his submission. His submission is that consumer protection and public confidence would be enhanced if there were greater political accountability. He doesn't like the fact that the rule-making power is being transferred to the OSC. He feels that at the very least, the Minister of Finance should say he approves or rejects or turns a rule back to the commission. He doesn't really like the automatic 75-day instatement of a rule if nothing happens.

My question is, I'd like to know why you feel that it's important to have the automatic 75-day provision for a rule to come into place. Do you think it's possible for the legislation to work in the way that you feel it should by making the minister do something within a certain length of time, either to approve or reject or return a rule? Would it work that way?

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**Mr Carson:** Yes, I think it would work. I regard that as a detail that doesn't go to the heart of the bill. I would assume that the reason the 75-day provision is there is so that a rule proposal doesn't just sit in the minister's office

and cannot be implemented because he or she chooses not to act on it. But as I say, I think that is a detail that doesn't go to the heart of the principles that underlie this bill.

**The Chair:** We have about 30 seconds, Mr Sutherland.

**Mr Sutherland:** Could you just outline in a bit more detail how you see the difference in how you regulate your members versus how the SDS operates and your view of the difference in the standards.

**Mr Carson:** First of all, I don't regard the SDS as a regulatory body at all. I wonder how many staff and how much resources they devote to regulation. I'm not aware that they do anything in terms of regulation.

The TSE spends about \$8 million a year out of our total budget on regulatory departments, including member regulation, market regulation and listed company regulation. I don't think, to be honest, there's any comparison there at all. The TSE has an ongoing market surveillance/compliance/review program which is sophisticated and thorough, and I don't think the SDS does anything in terms of regulation, to be blunt.

**Mr Phillips:** I appreciate the brief. Just a comment and then a question. Those are fairly strong words on the enforcement stuff. I know it's not directly related to the bill, but just reading it, it sounds like you are raising a fairly major alarm bell here.

**Mr Carson:** Yes, I believe the situation falls into that category.

**Mr Phillips:** I don't think it's directly related to the bill, but I think that's something we need to deal with.

By the tone of your comments, I kind of figure the impression you might have of the securities dealers society, but its proposal on the equal rights amendment, as they call it, is frankly the one issue that we've got here. There seems to be general agreement on most other things. Can you be helpful to us at all in terms of why we shouldn't support that equal rights amendment, as they called it? I assume you've had a chance to look at it.

**Mr Carson:** Yes. I understand what their concerns are, but I think our feeling would be that the decision on what registrants and individual rules should apply to should be left to the process that's set out in Bill 190. Why should a legislative amendment with respect to this particular rule—meaning we're all anticipating perhaps that the commission will bring forward some of the kinds of things that are in policy 1.10 in the form of a rule—why should that be the only rule that is governed by a specific amendment in the act?

I think the process of talking these things through, through a rule-making proposal which is subject to public comment, which allows all of the parties to make their case to the commission and then for the minister to be lobbied, if it gets to that, is the right process to deal with these kinds of issues.

**Mr Phillips:** On the surface there's a certain logic to their argument, which is that regardless of who is selling that product, the same rules should apply to everybody who's selling it. I know from the letter from Mr Waitzer



that that's not as simple as it sounds, but I'm looking for any help you can give us on why it isn't as simple as it sounds.

**Mr Carson:** First of all, I don't want to prejudge the issue. If and when a rule proposal comes forward, then this matter will have to be looked at again. But I would point out, as was previously brought up at the hearing, that there are specific rules governing marketing practices that apply to the TSE and IDA members which are enforced not only by their own compliance departments but by the compliance reviews that are conducted by the regulatory departments of the stock exchange and the IDA.

Further, although it's a true statement to say that all brokers, all dealers, are dealing in speculative issues and in fact that is a market that exists out there, I think it's important to note that in many instances the specific stocks that the non-member dealers are dealing in are a different group of stocks from the ones the members are probably dealing in, and we think that more of the problems are focused in the group of stocks that those non-member dealers are trading in.

**Mr David Johnson:** Thank you, Mr Bunting and Mr Carson. I wonder if you could just follow up on that last point. You're indicating that the securities dealers are dealing with different sorts of stocks than the members of the IDA? Is that what you're saying?

**Mr Carson:** When you talk about penny or speculative stocks, you can be talking about stocks that are in the unlisted market in Ontario, you could talk about most of the stocks that are listed on the Vancouver Stock Exchange and the Alberta Stock Exchange, and those markets are generally considered to be the definition of the penny or speculative market in Canada. However, within that general category there's a wide range of different types of issues, and I don't think it's unfair to say that some issues are more legitimate than others. Some issues have real companies behind them and others don't.

As I said, through the CDN, we conduct market surveillance of the unlisted stock market every day, and I don't think it would be an inaccurate statement to say that some of those stocks are trading at prices which appear to be ridiculous based on the apparent value of the issuer, and our investigations demonstrate what appear to be manipulations of some of those securities. That's one of the reasons why we think it's crucial that the securities commission have adequate enforcement resources.

**Mr David Johnson:** I appreciate those comments. I think your brief touches all the bases. But I'm going to go back to the enforcement again, which may not be the topic of this particular bill, but still, when you say that problems such as insider trading and market manipulation are being forwarded to the OSC and are not being followed up because of lack of investigative enforcement resources, that sends a shiver down my spine. Can you give us some idea of the magnitude of this problem?

**Mr Carson:** Yes. I don't want to be unfair to the staff of the enforcement branch of the OSC, who I think in fact are doing a good job and are doing a better job over the last few years than previously. As I say, their problem

is simply that they're getting a huge volume of problems coming into them—public complaints, investigation reports from the TSE, investigation reports from the IDA, referrals from other branches of the securities commission asking for action to be taken—and they simply cannot deal with more than a fraction of all those problems.

Now, nobody is going to be in the position or have the luxury of being able to deal with every problem that crosses their desk. If that was the case, we wouldn't be making the comment. It isn't that. It's that they can only deal with a small fraction of the problems and therefore there are significant cases that simply can't be dealt with.

**Mr David Johnson:** That shocks me, I guess, to hear that. So these are not frivolous cases; these are real cases involving insider trading and manipulation.

**Mr Carson:** That's right, and I think the director of the enforcement branch of the commission would tell you the same thing.

**The Chair:** Our time, unfortunately, has run out, Mr Johnson. I'd like to thank the Toronto Stock Exchange for making its presentation before the committee this morning.

1130

#### INVESTMENT DEALERS ASSOCIATION OF CANADA

**The Chair:** The final presentation this morning is from the Investment Dealers Association of Canada, Mr Ian C.W. Russell, vice-president, capital markets, and Mr Gregory M. Clarke, vice-president, member regulation. Please come forward and make yourselves comfortable. If you would identify yourselves for the purposes of the committee members and Hansard, then you may proceed.

**Mr Ian Russell:** My name is Ian Russell and I'm vice-president, capital markets, at the investment dealers association.

**Mr Greg Clarke:** My name is Greg Clarke. I'm vice-president, member regulation of the investment dealers association.

**Mr Russell:** The investment dealers association is pleased to have the opportunity to appear before the standing committee on finance and economic affairs this morning and express the full support of the association and its member firms for Bill 190, which is tabled before the Legislature. This proposed legislation amends the Ontario Securities Act in accordance with the recommendations of the final report of the Ontario Task Force on Securities Regulation, otherwise referred to as the Daniels report.

The IDA, or investment dealers association, is the national self-regulatory body and trade association of the Canadian securities industry. There are 111 securities firms registered as investment dealers which are members of the association. Our membership includes large and small securities firms located in all regions of the country and engaged in all aspects of the securities business. These firms employ nearly 24,000 people and have an aggregate \$4.5 billion in regulatory capital used to intermediate between savers and investors.

Association member firms raise most of the capital for businesses and governments in Canada and distribute these securities in domestic and international markets.



These firms account for all the agency and principal trade in equities and about 80% of the trading in fixed income securities in domestic capital markets.

The association regulates the business activities of its member firms and acts as the industry spokesman on industry and capital markets issues. Through its actions, the association promotes efficient and liquid markets by strengthening the integrity of the marketplace and broadening participation in the savings and investment process.

The rule-making authority of the Ontario Securities Commission has been called into question as a result of recent legal decisions. The association has recognized the critical need to restore this authority through appropriate amendments to the Securities Act and in this vein has contributed to the consultation process and has supported both the interim and final recommendations of the Daniels task force, which are embodied in Bill 190.

The current situation, in our view, is untenable. The Ontario Securities Commission must be given the proper authority to enforce existing rules and regulations and implement new rules as circumstances warrant. The longer this vacuum of authority is not addressed, the more the commission's authority is called into question, particularly as legal challenges chip away at the vestiges of its authority. This situation breeds uncertainty as to the efficacy of the rules and regulations governing market activity. It also encourages investors to withdraw from securities markets. Reduced investor participation will have a damaging effect on the liquidity and the efficiency of the marketplace. As well, issuers will be increasingly reluctant to offer securities in the domestic market because the enforcement of rules which govern disclosure and the trading and selling of these securities become virtually impotent and the integrity of the capital-raising process becomes suspect.

In sum, it should be emphasized that the Canadian securities industry supports and indeed thrives on a defined and effective regulatory structure which sets out a clear rule book for market activity. This encourages greater certainty among investors and issuers and contributes to increased business activity.

If the reputation of our marketplace is impugned because of a perceived or actual lack of effective regulatory oversight, then foreign investors will be less inclined to participate in our markets. In recent years, Canada has become dependent on foreign capital to finance the requirements of both governments and business.

The jurisdictional problems of the Ontario Securities Commission have not yet reached the stage to give undue concern to domestic and international investors. In our view, this is because market participants fully expect legislators to act expeditiously to restore the commission's authority in capital markets and fill the regulatory void. However, if Bill 190 is not passed in a forthright and timely manner, then the likelihood of negative consequences occurring in markets is likely to increase.

The jurisdictional uncertainty in Ontario has already contributed to an inertia in the policy-making needed to address changing circumstances in capital markets. This is partly due to the uncertainty surrounding the regulatory status of the commission. For example, the inability to

construct an acceptable framework for the transparency of the over-the-counter domestic debt market, despite more than two years' effort, in part reflects a reluctance by the commission to impose a mandated transparency model in view of the narrow limits of its jurisdiction.

As well, scarce resources at the commission have been committed to dealing with the jurisdictional problem. This has limited progress in moving forward with other pressing regulatory matters such as the need to give the commission the administrative and financial autonomy to carry out its mandate to promote efficient markets and ensure investor protection.

The upshot is that the commission has been hamstrung in taking its leading role in both domestic capital markets and international markets. Canadian capital markets and securities regulators are held in high regard, not just by domestic market participants but by international investors and regulators. The current chairman of the Ontario Securities Commission has been appointed as chairman of the technical committee of the International Organization of Securities Commissions, the pre-eminent international regulatory body. This appointment gives Canada considerable leverage and influence in international regulatory deliberations, and the appointment should give legislators even greater confidence to entrust rule-making authority to the professional staff of the Ontario Securities Commission.

Bill 190, which incorporates the recommendations of the Daniels task force, strikes an acceptable balance between the authority the commission needs to impose rules and regulations in fast-moving and innovative markets and the accountability to the public for its actions. The new legislation reaffirms the commission's authority to carry out its mandate to provide for efficient markets and investor protection and calls for notice and comment procedures and ministerial review of imposed rules and regulations.

You have heard earlier this morning from several witnesses who have raised concerns which may relate more to the provisions in policy 1.10 and policy 5.2 than to Bill 190. It is important to bear in mind that the purpose of these hearings is to elicit comment on the proposed regulatory structure as set out in Bill 190 and not on the particular merits of policies, blanket orders and rulings. Bill 190 provides the framework for full public comment on proposed rules and regulations, which should give confidence to all market participants that their views will be accorded a full and open hearing.

The Daniels task force, in its deliberations, took great care to ensure the widest possible debate on proposals for regulatory reform and in fact solicited two rounds of public comment following the interim and final reports of the task force. We believe the final recommendations carry the broad support of most issuers and investors in the domestic market. All members firms in the Canadian self-regulatory system which will be subject to this new regulatory regime are fully supportive of the proposals.

We encourage members of the standing committee on finance and economic affairs, in the interests of promoting fair and efficient markets, to recommend the expeditious approval of Bill 190.



These foregoing comments conclude my formal testimony, and I and Mr Clarke would be pleased to take any questions.

**The Chair:** Thank you very much for your presentation. We have about seven minutes per caucus, and we'll start with Mr Phillips.

**Mr Phillips:** I appreciate the presentation, and just so you know where I think this bill is, we're down to, I'd judge, kind of one issue. I think there's broad support for the need for legislation and it has to do with this equal rights amendment, so described by the securities group.

Help us out—help me out a little bit anyway—in terms of the difficulty with prescribing that the rule should apply equally to all people selling a particular form of securities, in that logic sort of says to me on the other side that you might welcome fairly stringent rules for those people selling it. I would think the investment dealers already have some fairly stringent rules, so suddenly those same rules would apply elsewhere.

On the face of it, there's a certain attractiveness to the equal rights amendment. The securities commission has indicated, and the bill itself, that it won't work, but I'm having a little bit of trouble just finding out why.

1140

**Mr Clarke:** I'll handle that. I think the key element in equal rights or the view that things should be equal we do not disagree with fundamentally. Our problem with it is that if we are only talking about the rules implemented by the securities commission, we don't think that's the appropriate way that "equal" should be interpreted.

The Legislature has given the securities commission the right to recognize self-regulatory organizations. We fundamentally believe that all people who are dealers ought to be members of the self-regulatory organization. There are many benefits to this. For the public, we offer an investor protection regime which is beyond all comparison with what's offered in other ways. We offer an enforcement regime. You heard from Mr Carson just before I was here that between the IDA and the TSE, we have 100 people working in the province of Ontario whose full-time job it is to go around and review the members in terms of their compliance with the capital requirements and in terms of their compliance with our requirements on how the conduct of business ought to be done. Our requirements include all of the requirements in the securities commission and go beyond that and make further requirements. We also register the individuals, and when there are complaints against our members, we handle every single complaint that is made in that regard, as between the IDA and the TSE.

So in our regime we have more stringent rules to begin with; we have built-in enforcement, always subject to securities commission review. The Ontario Securities Commission has been in to the IDA and reviewed our entire process for handling investigative cases in the last couple of years. There is a coherent, thorough job done on regulation. We have a set of rules which is above those in the Securities Act.

The problem in this whole thing is that to the extent people stand outside of the self-regulatory regime, they

are subject only to those rules which are in the Securities Act. It would be my submission to you that the combination of all IDA-TSE rules in conjunction with the Securities Act is far beyond what is in 1.10. I believe that our members support self-regulation because they get to input directly into the process by which our rules are made. They are more knowledgeable about the way the market operates than anyone else and on that basis make better recommendations.

I'm not saying there are necessarily any problems with 1.10, but I would argue that 1.10 is a pretty blunt instrument. Over the course of the 25 or 40 years that we've had a self-regulatory system in Canada, we have developed better, maybe more workable rules for our members through that. We encourage the Securities Dealers Society of Ontario to either set up its own self-regulatory organization or to join the IDA and TSE in it. But to talk about equal rights is nonsense. Our rules are far more severe than policy 1.10 ever could be.

**Mr Crozier:** Can you tell me why the securities dealers association is not a self-regulatory group?

**Mr Clarke:** There is a history. There was a predecessor organization, in any event, called the Broker Dealers Association in Ontario, I believe in the early 1980s and perhaps the late 1970s also. My knowledge of it is relatively minor. I expect that through various periods of time they found that self-regulation is an expensive thing to do. Our members spend \$25 million a year in supporting this system. I don't know how much it would cost to regulate seven or eight firms, and I shouldn't speak for them, but it strikes me that one of the potential reasons why they don't have a self-regulatory organization is because it's expensive.

**The Chair:** Thank you, Mr Crozier. We have to go on. Sorry.

**Mr David Johnson:** I thank you for your presentation. It has certainly been very helpful. I'm just trying to recall; it wasn't stated here today, but I think, since you were talking about policy 1.10, that some of the aspects as they apply to the securities dealers involved a time frame for disclosure. That is the basic issue, I think, disclosure of information, under 1.10.

There's a time frame involved and there's certain information that is involved in terms of flowing to the potential purchaser. I think it's their contention that because of the time frame involved and the information involved, which I believe they've expressed to me are more stringent than would be required through your members, for example, it's their concern that people would not purchase penny stocks through them but would simply shift to your members. I wonder if you would comment on that.

**Mr Clarke:** Again, this is a place where there's a difference in doing regulation in one way and doing it in the other. The reason why that kind of communication with the client is necessary is because it's the view of the securities commission and certainly mine, not necessarily widely supported, that these people do not take into account their clients' best interests in terms of doing the ongoing job. Therefore, the clients have to be informed on an ongoing basis that there are risks etc in the thing.



The way our rules handle that kind of concern is that we put an ongoing obligation on firms to act in the best interests of their clients and then we monitor and follow them up. We charge individuals and firms if the trades that they make on behalf of their clients are not suitable for the clients so that they get the right treatment. So, rather than requiring an exchange of pieces of paper in every circumstance, we put an ongoing monitored requirement on the members to ensure that they act in their clients' best interests in this regard. It's a different model but, having said that, I would say that the standard on our members is far higher than any kind of standard that's put on by the legislation.

The fact that in particular circumstances a particular technique may not be particularly effective just in terms of paper flow and the rest of it is I think, in my submission, the reason why our members form together in self-regulatory organizations. They would like the rules to be effective, but they would also like them to work in a manner that's efficient for our members. I can't really comment on whether it is actually ineffective. I don't know, but I would argue that if it is, simply put, they should get together and put in force some other kind of regime that is helpful.

**Mr Russell:** The other corollary to that might be that if they feel there is a serious competitive disadvantage they're under because of those particular regulatory provisions, they have the option to come into the self-regulatory organizations in Ontario, either becoming a member of the IDA or the Toronto Stock Exchange, which several have done.

**Mr David Johnson:** Good. In terms of Mr Carson's comments that there are penny stocks and there are penny stocks, I think he was indicating that perhaps the IDA members might deal with different sorts of penny stocks than the securities dealers. Can you enlighten us on that?

**Mr Clarke:** I think the fact of the matter is that listing on a stock exchange implies there has been vetting done by the stock exchange of the underlying company to ensure that there actually is a business here and that in some manner—I mean, it doesn't hold out that it's a good investment, but there is actually a business and they make a number of requirements.

The over-the-counter market is essentially a market where those kinds of requirements are not there. One of the differences between CDN and the TSE is that the TSE listing department does not look at and make requirements of the stocks that are on there.

What Mr Carson was saying, I believe, was that the OTC has a broad variety of quality. A stock exchange listing implies a minimum standard of quality. Whereas the OTC market may have some of the very best stocks in the world—typically you find quite often into that marketplace go overseas listings that have not been listed for trading on the Toronto Stock Exchange or another Canadian stock exchange, so you may have some of the very best international companies in the world on that market—you may also have companies that are of much lesser quality and in fact do not meet any kind of real minimum standard.

**Mr David Johnson:** I wanted to get your comments,

before we ran out of time, in terms of Mr Carson's statement with regard to insider trading and market manipulation. I wonder what you see from your vantage point. This is a great concern to me, I must say, that apparently this is transpiring. He thinks it's significant.

**Mr Clarke:** I believe Mr Carson's point was that the securities commission does not have the resources to deal with all of the cases that come forth to it, and on that basis must make a selection as between cases which they can handle and they cannot handle.

It is certainly my view, not based on a tremendous amount of experience—I mean, our organization investigates all of the complaints made of our members, who are our responsibility—that this is becoming an increasing job. There are larger and larger numbers of complaints from the public and typically, when the markets start to go down, you find ever-increasing numbers, so this year has been a year where there have been increasing numbers of complaints and one must vet and choose between them.

Simply put, the securities commission is subject to a number of requirements: the cutbacks in expenditures in all government departments, it's not getting more people and it's probably getting more complaints. Well, it's surely getting more complaints. On that basis, they have to do their very best to select which cases are the most important, but I have no doubt that they are letting go cases which are probably of merit because they simply don't have the resources.

**Mr David Johnson:** This concerns me because you mentioned the confidence that's required in the market system, and I share your views on that.

**Mr Russell:** If I could just make one observation, there was an OSC staff review that looked into prospectus financings involving broker dealers in a five-year period between 1987 and 1991. The findings of that report were that more than 50% of the proceeds that were raised from these prospectus offerings flowed to the broker dealers and less than 40% went to the issuers of the securities. That doesn't necessarily imply market manipulation, but it does suggest a rather unorthodox way of financing.

**Mr David Johnson:** I didn't get the sense that Mr Carson was just talking about the broker dealers when he was talking in terms of insider trading and that sort of thing, but perhaps I should deal with him afterwards.

**The Chair:** Thank you, Mr Johnson. Mr Sutherland.

**Mr Sutherland:** If I could then go back to the earlier comments that we heard from the securities dealers about the level playing field and their argument that the equal rights amendment brings a level playing field, I use the analogy with them that maybe there wasn't the level playing field to begin with. In other words, TSE and your organization were up here, their standards may have been here and then that was just bringing them up to an equal playing field. If I understand your comments correctly, you're saying that this policy 1.10 wouldn't even bring them up to a level playing field, to the standards that your organization has or of the TSE?

**Mr Clarke:** That certainly was our submission and



our comment on policy 1.10, that this had merit. In our minds, it addressed some of the concerns, but certainly we didn't feel that clients who dealt through securities dealers got anywhere near the same kind of treatment and concern as would clients of investment dealers or brokers, members of the Toronto Stock Exchange, because our rules were still much more severe in terms of the responsibility and the requirements put on our dealers.

**Mr Sutherland:** And therefore there is not an undue burden on the securities dealers.

**Mr Clarke:** In some. I'm not trying to tell you that the specific mechanisms in that particular policy were an effective, efficient way to carry on your business. All I'm saying is, if they wanted to do otherwise, they could become members of the IDA or TSE if they chose to, or they could set up their own SRO and make more effective, efficient rules, but that's one of the benefits of self-regulation. If one chooses not to set up a self-regulatory regime, one is subject to the best job that regulatory organizations can do.

**Mr Russell:** I think another point, just to amplify on what Mr Clarke has said—you're right; there is a move with 1.10 to achieve more regulatory equivalents. It's interesting that when you look at those regimes, most of the complaints that have arisen have come from the broker dealer side, as opposed to the IDA, which has prompted this move to try and move the standard of regulation up for the broker dealers through 1.10.

**The Chair:** I'd like to thank the Investment Dealers Association of Canada for making its presentation before the committee this morning. Thank you very much.

I would like to remind the committee members to bring the package that was sent to your respective offices with respect to our presentation at 3:30 this afternoon. Also, the clerk has handed out a package that is for the 4 pm presentation this afternoon. I just remind you to bring them because she doesn't have any other copies.

**Mr Johnson:** We can leave this here?

**The Chair:** You can leave them here for sure.

This committee stands recessed until 3:30 pm, or immediately following routine proceedings.

*The committee recessed from 1155 to 1531.*

PHILIP ANISMAN

**The Chair:** The standing committee on finance and economic affairs will come to order. We continue our hearings with respect to Bill 190, An Act to amend the Securities Act. Our first presenter this afternoon is Mr Philip Anisman, barrister and solicitor. Please make yourself comfortable, sir. You have up to 30 minutes to make a presentation and you may wish to leave some time for questions from the committee members. When you're comfortable, you may proceed.

**Mr Philip Anisman:** When does the clock start running? When I begin?

**The Chair:** It started when I started.

**Mr Anisman:** Thank you for the opportunity to appear here today. I recognize that time is brief. I provided a submission to the committee on Monday which I understand all of you have. I also sent copies of

that submission to the minister, to officials in the ministry and to Ed Waitzer at the securities commission.

The submission focuses on Bill 190. It contains a number of comments with respect to provisions in Bill 190 that I believe require amendment and has draft amendments in it reflecting the suggestions that I make. For ease of reference, just in case anyone hasn't noticed, at page 3, the third page in the submission, is an index which directs you to the pages at which the specific statutory provisions are discussed, because the table of contents isn't chronological through the bill, it goes by subject matter.

There's one other matter that I should refer you to. I received yesterday evening a letter from Ed Waitzer relating to some of my earlier comments on Bill 190. I believe that it was written before he'd had an opportunity to read this submission. He sent copies of that letter to the leaders of the opposition parties, to members of this committee and to the minister. He raises a number of comments in it with respect to some positions that I've taken and that I'll take today. I'll be addressing his letter in the course of my comments to you.

I should say at the beginning that I've participated in the process that's led to this bill from its inception. I made submissions to the Daniels task force, I've written on the task force report and I commented on the Daniels work as it was proceeding. I've done so because I believe that the issues that are dealt with in this bill are very important, not only with respect to the securities commission but with respect to public law and the functioning of public authorities in this country.

I should say at the beginning as well that there are a few general statements I should make before I get into my specific submission. I have a hunch I'll reduce your question period.

I believe, and I believe strongly, that we require in this country efficient and effective regulation of the securities market, both in Ontario and nationwide, to make it work to the economic benefit of Canadians. I believe the OSC should have powers adequate to enable it to conduct the regulation of the securities market. But I also think that in giving it powers, it's necessary to recognize that powers carry with them dangers and that unconfined powers create risks, whoever exercises them and however well-meaning they may be, and that when powers that are broad are given to subordinate authorities under the Legislature, those powers must be given in a manner that ensures accountability.

I say that quite conscious that both of those goals are necessary and may conflict. I think a balance can be achieved in reaching them. I quite frankly think that Bill 190 is out of balance, and that's why I'm here today.

I believe the OSC should be given rule-making power, but I think that power must be accompanied by adequate mechanisms to ensure the commission's accountability and to check for potential excess; to make sure, in other words, that the commission stays within reasonable bounds when it exercises those powers.

Bill 190 would give the Ontario Securities Commission broader powers to make laws than any subordinate



agency that I'm aware of in Canada has or has ever had. It would be given those powers against a background of conduct during the last 10 years when the commission has exceeded its jurisdictional limits on a substantial number of occasions, in my view, and has engaged in regulatory conduct knowing that that conduct was beyond its jurisdiction.

I'm not suggesting when I say this that they're bad people or that it was improper in any sense other than the sense that I happen to believe that governmental bodies which have statutory authority should pay attention to the limits in it. I happen to believe that the commission, in pursuing its regulatory goals, goals that it believed quite proper and that may very well have been proper, ignored those limits on occasion. It lost sight of what I take to be serious process issues. I tell you that only because I think the history of the commission indicates the importance of ensuring that when it's given the kind of powers it will be given in Bill 190, I take it, there are appropriate checks and balances in place.

That's background to the first issue I'd like to address—it's addressed in my submission—and that's the question of judicial review. My submission states that in my view Bill 190 should be amended to provide expressly for judicial review of commission rules and should set the standards for that review. I'll try and take you very briefly through my reasons for that.

First, section 143 of the act, once Bill 190 is enacted, will give the commission very broad rule-making power. The Daniels task force itself stated that the powers were very broad indeed. I'd suggest they're virtually unlimited, even though the "last basket" provision in the Daniels task force report was removed from subsection 143(1).

Secondly, the commission's power will be enhanced significantly by the fact that new subsection 1(1.1) will give it the power to define terms in the act. That power will enable the commission, at least with respect to those terms—and they're broad terms, like "derivatives"—not all of which are securities—"related party transactions," "market participants"—to define the scope of its own jurisdiction with respect to those categories of activity or people by making rules. Then it can make rules further to define what they can do.

1540

You'll see in my submission, at page 12, that I recommend that the definitions should only be definable in regulations by the cabinet, not through rules, so that the commission doesn't perform both functions. But even if that recommendation is accepted, the power in section 143 is very broad indeed. I submit to you that this breadth mandates serious mechanisms of accountability to be included in this bill.

The bill relies on two mechanisms: the notice and comment procedure for rule-making and ministerial approval. In my view, neither of them is adequate to the task. The commission controls the notice and comment procedure. It's ultimately the decision-maker and it doesn't have to make public all of the information on which it relies, although, in fairness, I expect most of it'll be made public, but it doesn't have to. The Daniels task force itself recognized that the political review contem-

plated by its recommendation that the cabinet consider rules wasn't going to be used very frequently, and I suggest that experience supports that.

I think that the only mechanism available that will help to provide an adequate check on the commission's powers is judicial review. I'd like to read you a sentence from a 1973 article by James Baillie, a former chairman of the commission, some five years before he became chairman, talking about judicial review. Here's what he said: "While a remedy is available through recourse to the courts in cases where a securities commission has exceeded its authority"—meaning on jurisdictional grounds—"the powers of the securities commission are sufficiently broad that this rarely operates as a material constraint."

Since 1973, courts have come to grant more deference to securities regulatory authorities, and I am sure you're all aware of the *Pezim* case in the Supreme Court of Canada. In addition, the breadth of the rule-making power in section 143 virtually, I suggest, guarantees that a jurisdictional challenge to commission rules isn't going to happen.

I think that what we need, and what this bill needs, is a provision authorizing judicial review. I don't think it's all that difficult to do. My submission, at pages 16 and 17, has a draft provision that could simply be plugged into the act if you accept my submission.

I suggest as well that the standard of review should be one based on arbitrariness, capriciousness or abuse of discretion, and that in determining whether a rule is arbitrary a court should be authorized to look at the proportionality of the rule, by which I mean whether it accomplishes its purpose as stated by the commission in connection with the rule-making and in light of the statutory principles and purposes clause that is in this bill, which itself contains a proportionality standard. I suggest to you that would help. I don't think it's very novel.

Some of you may have heard a number of objections to this proposal. One that's been made is that it would create significant costs and uncertainty. I don't think it would. I expect that judicial review would occur at the fringes. The courts wouldn't second-guess basic policy of the commission with a provision like mine but would only look for serious unreasonableness or excess. In fact, I suggest to you that the experience in the United States supports what I've just said. The rule-making provisions in this bill are based on US law. In the United States there is judicial review of rule-making. It's been left out here.

In the acts administered by the Securities and Exchange Commission in Washington, at least in one of them, there's a specific provision for judicial review of rules which has standards much like the ones in my draft. I know of no challenge to an SEC rule through judicial review in the 60 years since that provision was enacted. I know of only one case that challenged the validity of an SEC rule. I think it was struck down, and it was a criminal prosecution, *United States v Chestman*, I believe, some years ago. That goes to the question of costs and significant uncertainty.

The other argument that's been made is that the



proportionality standard I suggest is novel, that I'm the only one who suggests it and that it's undefined. I frankly think it's defined in the draft I've given you. I don't think it's all that novel. Courts in judicial review of adjudicative matters have been prepared to consider proportionality when dealing with reasonableness. They don't do it frequently, but they've been prepared.

I'd suggest that if that's the stumbling block, I'd be happy to drop subsection (7) from my section and leave it on a straight standard of arbitrariness, capriciousness or abuse of discretion. In other words, I frankly don't see how this kind of power can be given without some kind of judicial review.

I also recommend in my submission that judicial review of policies be given. I think there are slightly different standards required for that, and there's an alternative provision with standards in it on page 20 of my submission. That brings me to two provisions in the bill which I'll suggest to you are both overbroad and unnecessary.

The first one is subsection 143(3), which would empower the OSC, with the minister's approval, to override regulations. In fact, I think that provision was added to the act. It's quite a remarkable provision and I should say up front that it's wholly inconsistent, in my view, with democratic theory. I just don't see how even a minister can override a regulation. But I think that the reason it's there is not unreasonable. It was put into the bill, I think, to enable the commission to make rules on subject matters that are currently covered by the regulations under the act. The Daniels task force would have done it another way and would have required the cabinet to make an order with respect to each regulation each time. My guess is that this was put in because it just seemed easier, more practical.

In fact, Ed's letter to me—the one I mentioned at the beginning—suggests that what I'm suggesting just wouldn't happen, in any event, because it's pretty clear that no minister is going to override a regulation. I address that issue at page 27 of my submission. In fact, I'd agree that if the current government enacts a regulation to override a commission rule, the minister won't approve another regulation reversing it. But I don't know what'll happen when the next government comes into power and I don't know what'll happen when the government after that comes into power. As I say, I think the provision is wholly inconsistent with democratic theory. It seems to me that there is a risk there that needn't be taken.

If I'm right about what the purpose of that section is, the simple way of dealing with it is to deem all existing regulations under the act to be rules, and then the commission can deal with them as it should. I think that's an appropriate mechanism, and there's a provision that would permit that at page 27 of my submission. It would simply permit the commission to deal with all the subject matter that's now covered by the regulations by deeming all the regulations to be rules. It's more direct, it's simpler, it avoids the complexity in the current act and I think it does what they intended it to do without the excess and the potential excess that's in the current draft.

Ed says they wouldn't do it. Well, then, don't give them the chance; they don't need it.

The same comment applies to subsection 143(6), which deals with incorporation by reference. The section is overbroad. It allows the commission to adopt policies by incorporating them, by reference, into a rule. That's quite inconsistent with what Daniels meant to happen, and in fact Ed's letter says they simply wouldn't do it.

My concern arises from the fact that the commission, in one of its submissions to the Daniels task force, said that there are a number of independent regimes that it's created through policies that are essential for the functioning and the regulation of the securities market. Not all of those policies identified are in the schedule to this bill. I think there is a possibility that subsection 143(6) could be used for them, and I'm not sure it would be unreasonable to do that in the circumstances, but I don't think that it's appropriate for the commission to be able to incorporate its policies into a rule.

Again, Ed says in his letter—the one that I received last night—that the commission clearly doesn't intend to do that. My response is that if the commission doesn't intend to use the section that way, make it clear. Ed suggests as well that I'm raising this horror because I needed to support my argument on judicial review. In fact, I don't; I think that's an independent argument. Even if you accept my position on judicial review, I think this section should be amended. Given that the commission says it's not going to use it this way, I don't see any problem with doing that. My concern is simply that power, once given, isn't easily withdrawn. Once it's there, someone's going to use it some day. So I think it should be clean on the way in.

#### 1550

I think I'm approaching 20 minutes. If I may, there's one more major point I'll make. There are a number of other points I thought were major, but I'll skip them. I think this one is crucial, and then I'll stop to give you an opportunity to ask me any questions you'd like, and it has to do with the confidential treatment of rules. Under the bill, and this is consistent with the recommendations in the task force report, the commission is not obligated to disclose information that it thinks should be treated confidentially even if that information is significant in its view and influences the rules that it makes; nor is it obligated to disclose submissions made with respect to rules during the notice and comment period that it concludes should be treated confidentially on a request, even though those submissions may inform the final rule adopted.

My problem with that position is pretty simple. The purpose of the rule-making procedure is to enable people who are affected by a rule to respond to the rule and comment on it so that they can inform what goes on and have a say in it. Indeed, that's the mechanism that Daniels saw as crucial to accountability. But I just don't see how people can participate in a process when they're not aware of material information that informs that process. It's that simple. If this were a case of insider trading, the commission would be on my side.

When I delivered my paper at Queen's a few weeks



ago on the Daniels task force, Joan Smart, the vice-chair of the commission, was commenting on it, as by the way was Jim Baillie, and that's where the remarks in Ed's letter come from. Joan said that the confidentiality issue is met by the fact that the minister gets all the information. The problem with that is that the 60-day period for the minister is a period during which people are intended to be able to make submissions to the minister to address issues that concern them on rules through the political process. I don't see how they can address issues with the minister if they're unaware of information that's been relied on any more than they could address them before the securities commission. So the confidentiality treatment simply undercuts, in my view, the whole purpose or a significant part of the purpose of meaningful participation in rule-making and the accountability function that it performs. Again, I think this can be simply dealt with. There are draft provisions which could be added to this bill at pages 36 to 38 of my submission relating to both rules and policies.

My submission contains issues on transition. I won't mention them. I will mention one other issue and that is this: The commission over the years has made a number of blanket orders and rulings. They're all going to be grandfathered in the schedule. In my view, most of them were unauthorized. If I'm right, and my analysis is in submissions that have been made to this committee before, people who have relied on those blanket rulings and orders, issuers and individuals, may be exposed. I suggest at page 22 of my submission that the act should be amended to protect them. There's nothing in Bill 190 to do that now. The provision would also protect people who rely on a rule that is subsequently declared to be invalid for any reason and therefore a nullity and therefore not law. It derives from American securities law as well, but I think it's a healthy protection for individuals that really should be in this bill, and frankly I'm quite surprised that it isn't.

I also have submissions on memoranda of understanding. To put it simply, I think notice and comment requirements should apply to them when they affect or may affect individual rights, and I can tell you that some of them do.

At this point, I think I should stop. I'm 22 minutes into my 30 minutes of time and there are a number of other substantive and technical submissions in my formal submission. If you have time, perhaps you might want to consider them, and that'll be facilitated by the index at the beginning, when you go to clause-by-clause after you hear submissions. I'll simply conclude by thanking you for this opportunity to make some of my views known to you. I'm happy to take any questions any of you may have.

**The Chair:** Thank you, Mr Anisman. We have somewhere between two and three minutes per caucus. We'll start with Mr Johnson.

**Mr David Johnson:** Thank you very much, Mr Anisman. You've prepared a very detailed brief, and the problem that we face, which I guess you fully understand, is that we have one day today and the House sits next week. Either this goes through next week or it doesn't go

through at all. My guess is, looking at all the excellent information you've given to us and the deputations that we've heard this morning and the further one this afternoon, that either the bill will essentially go through in the form it's in right now or it won't go through at all.

You talked about judicial review, you talked about confidential information, the broad powers of the OSC etc. I wondered, if you were sitting where we're sitting and were put in that situation, would you support the bill the way it is or would you support that nothing happens?

**Mr Anisman:** You'll notice that I didn't refer to that particular question in my submission. In fact, when I wrote it, I simply assumed the bill would go through and I was hoping to find a balance in it. Ed's letter to me raised that question expressly and said he knows I agree with the thrust of the bill, he knows I agree with rule-making and he assumes that I would agree that it's better to let the bill go through so the commission can deal with current problems now. That forced me to think about it, and I've thought about it hard. Well, I won't stall. I'm reluctant to say this, but I don't think I'd approve it now.

I think that with judicial review it could go in. I suggest to you that there are provisions in my submission that this committee, when it goes to clause-by-clause, should be in a position to consider and adopt. They're before you, they don't require much drafting, I've given you all the provisions that can simply be put in if you accept the principle and the commission and the ministry have had time to consider them because I sent copies to them on Monday. So I'll be very frank. I wouldn't pass the bill as it now stands, if it were my decision, but I would pass it with the amendments and I think that can be done today.

**Mr David Johnson:** One of the other possibilities, and I think it was raised in one of the other briefs, was to deal with the situation that exists now but look at a more thorough review next year.

**Mr Anisman:** I'm troubled by that too. I'm troubled by it because I can't foretell the future. The quinquennial review has also been referred to. I would say this: I don't know if I have any suasive power anywhere, but if I had any suasive power it would be to suggest that you adopt the judicial review provision and pass this bill.

**Mr Sutherland:** If I could just pick up on that comment about the judicial review, are you saying if judicial review is put in, then you would support the bill, or are you saying your form of judicial review, which brings in this whole new concept of proportionality and in some cases, rather than to talk about concepts of law, some may feel that you're asking them to be a new tribunal over the securities commission? So are you talking about a plain judicial review which people have access to or are you talking about your judicial review?

**Mr Anisman:** I'd prefer my judicial review, and I don't think proportionality is all that novel, but I live in a world of second-best. What I'd say to you and as I said in my initial presentation, if you take my provision at pages 16 to 17 and cut out the proportionality section, what you have is a traditional, standard judicial review provision.



I think that as a compromise and as second-best, I would be happy to see the bill go through with that provision, deleting my subsection (7).

**Mr Sutherland:** Thank you, Mr Anisman, for your very detailed submission. It's not too often that we get an individual person who has spent this much time going through a specific piece of legislation.

**Mr Anisman:** I just can't understand them without doing that.

**Mr Phillips:** Mr Johnson indicated our challenge here, which is that we are being told of the importance of this bill, and from everything I've heard, it is important to the wellbeing of our securities industry. You've obviously put in a lot of work on this and are very thoughtful on it and are, frankly, quite persuasive. But the challenge, I think, for us is that your arguments have been heard and weighed by others before and then not brought forward, so I think you might also appreciate this is a somewhat technical matter. I mean, it's important, but a somewhat technical matter. What was the argument used with you for not accepting your argument?

1600

**Mr Anisman:** I think the argument against accepting my argument was twofold. One was that the proportionality standard was novel, and the second part, that it would throw the courts into second-guessing the commission on substance. It was a variation of the question I've just been asked.

The second argument against it was that it would create costs and uncertainty. I addressed both of those arguments in my submission. As I've said, the SEC has made rules since 1934 in the United States. They're subject to a judicial review provision in their own legislation and in the federal administrative procedure act and there has not, to my knowledge, been a single challenge to one of their rules through judicial review. There have been under other legislation with other bodies, but not there, so I just don't buy that criticism.

The second one about proportionality, I disagree with it, in fact. I don't think it's that novel, but as I've said, I'd be quite prepared to live with a traditional standard of judicial review as a compromise and have the bill go through with a little more check on the commission. I don't think it's a technical issue. I think it's a straight matter of principle. I quite frankly think that the commission is being given in this bill enormous power, more than any subordinate body I've ever seen in the British Commonwealth. I've actually looked at some other countries on it.

It seems to me it's necessary to have checks to protect against excess. I don't think it's going to be used all that frequently. I think it's healthy to have the commission not view itself, though, as a law unto itself, only having to justify its position to the minister, given the minister's busy schedule. It should have to recognize that if it goes too far on traditional administrative law grounds and is excessive, a court may deal with it and that people have an alternative route. I think that will be a healthy regimen for it to look over its shoulder when it makes rules. I think it will help the securities market, it will help the

commission's credibility and it would help this bill.

I should say one other thing. I know I talk too much, but the position I took in response to Mr Johnson's question wasn't easy for me because I've devoted most of my professional life to working on securities policy. I've drafted securities laws; I've written in favour of strong securities legislation. I've tended to advocate those kinds of positions. I very strongly believe that we need a strong securities commission in this province, but I also think there are other principles that are beyond simply the securities market, that go to the protection of individuals and the constitutional integrity of our whole system and they're invoked by this. I don't think—I don't understand, quite frankly—why it's an all-or-nothing proposition. I don't understand why an amendment can't be made in the clause-by-clause session when you have draft legislation before you and when you have an opportunity to have the commission analyse it and tell you what's wrong with it, if you agree with me in principle.

**The Chair:** Mr Anisman, your time has expired. I want to thank you very much for making your presentation before the committee this afternoon.

**Mr Anisman:** Thank you for your generosity in allowing me so much time.

#### ONTARIO SECURITIES COMMISSION

**The Chair:** The next presentation this afternoon is by the Ontario Securities Commission, Mr Edward J. Waitzer, chair; Mr John A. Geller QC, vice-chair; and Mr Harvey Tanzer, deputy director and senior legal counsel, capital markets branch. Please come forward and make yourselves comfortable, if you would be so kind as to identify yourselves for the purposes of the committee members and Hansard, and when you are ready you may proceed.

**Mr Ed Waitzer:** Thank you, Mr Chair, and thank you for the opportunity to appear here today. Mr Geller, who is vice-chair of the commission, is on my left, Harvey Tanzer is on my right, and my name is Ed Waitzer.

We're grateful for the opportunity to make submissions regarding Bill 190. As you know, I have circulated to the clerk of the committee and I think each of you has received letters that I had written in response to the concerns raised by each of the three intervenors who raised concerns about Bill 190. I don't propose to deal with those now, except to the extent that any of you may have specific questions.

Instead, I thought it might be helpful to address myself to Bill 190 itself and its implications for the Ontario Securities Commission, Ontario's capital markets and the investing public. It might be helpful for me to begin by putting Bill 190 into historical perspective.

The commission's twofold mandate is investor protection and the promotion of fair and efficient capital markets. Of the various statutes administered by the commission, the Securities Act is by far the most significant. Given competing demands for legislative time, the Securities Act hasn't always kept pace with changes in a highly dynamic domestic and international marketplace.

In response to those legislative shortcomings, the commission has over time, through a variety of instru-



ments, including blanket orders, rulings and policy statements, worked in response to demands from market participants towards providing responsive and timely solutions in order to fulfil its mandate.

Although everyone may not agree with the jurisdictional authority supporting the use of those instruments, most of those affected by them have expressed overwhelming support for the results which they have achieved. I think that was evident in the submissions made to the Daniels task force.

In August of last year, policy 1.10 of the commission, which you heard about this morning and which provided guidelines affecting broker dealers, was found by Mr Justice Blair in the Ainsley decision to be more in the nature of a rule than a policy and it was struck down. It is not effective today. That decision is currently under appeal, arguments were heard earlier this week, and I want to correct any misapprehension that Mr Finlay left this morning. That litigation is not an attack, certainly from the commission's point of view, on the securities dealers society, nor on any of their matters. Rather it's an attempt to achieve judicial resolution of two important legal issues that affect the commission's mandate.

Recognizing the significance of Justice Blair's decision and the potential implications for capital market participants, the government quickly responded by authorizing a task force, comprised of representatives of the commission and the ministry and shared by Professor Daniels, to consider the implications.

Within the time frame available to it, that task force I think undertook a remarkably transparent and open process involving a great deal of public participation, all of which is indexed in the report itself, to determine an appropriate balance between the authority necessary for the commission to fulfil its mandate and an appropriate level of accountability for such an agency in our parliamentary system. The task force, after two formal rounds of consultation and very extensive informal consultations, developed suggested legislation which forms the basis for the bill before you today.

Among other things, Bill 190 provides for a public and transparent rule-making process and the authority to make rules within specified purposes and principles and discrete heads of authority. The process for rule-making entrenched in the Securities Act the obligation of the commission to put out for notice and comment all proposed rules, justify the authority and rationale for the rules, describe the alternatives considered and the basis for their rejection, as well as respond to issues and concerns raised during the comment period.

Market participants will be beneficiaries of this process, not only as a result of its transparency and ultimate certainty but also by virtue of ensuring that all concerns raised are duly considered, both by the commission and ultimately at the political level.

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The process provided by Bill 190 ensures that concerns such as those raised by the broker dealers this morning in connection with policy 5.2, the fairness of registration conditions or the former policy 1.10, can be brought to

the public's and the minister's attention and will be given full consideration in the context of any regulatory proposal advanced by the commission.

In addition to these procedural safeguards, the bill also provides that all proposed rules, as well as public comments, be submitted to the Minister of Finance for consideration before they can become effective.

Phil mentioned to you that there is provision for confidentiality. I would simply note that there are statutory conditions which prescribe that confidentiality and suggest to you that there are circumstances where not having provision for confidentiality, strictly circumscribed by statutory standards, might hamper the ability of the commission to get the kind of input it requires in order to formulate policy.

In addition, for purposes of ensuring that the commission's agenda is in sync with the markets and continues to be responsive, the commission is statutorily required to annually list its priorities and the status of its current initiatives. Furthermore, to ensure that the act keeps pace with market developments, the bill requires a quinquennial review of the Securities Act.

There is also, as the stock exchange noted in its submission this morning, provision for judicial review to the extent that the commission exceeds the authority conferred on it by the Legislature.

The proportionality doctrine that Phil just advocated is novel and untested in Canada except in constitutional cases. When Professor Hudson Janisch, who is one of the leading authorities on administrative law, pointed this out at the Queen's conference to which Phil referred, less than a month ago, Phil acknowledged that he hadn't yet thought through the standard, and I only saw the drafting of his proposed amendment yesterday.

Phil knows my high regard for his knowledge of securities law and commitment to the process, but on this particular issue, I think he has gotten to the stage—and Phil has made a very substantial contribution to the process throughout. I think he now finds himself in a singular minority and at a level of technicality and fine-tuning that, to my mind, would be dangerous to start invoking without having had the benefit of the same kind of public comment and input that the Daniels task force went through.

The bill is an extremely significant piece of securities legislation in that it provides the means by which Ontario's securities regulatory framework can continue to maintain the high standards for which it is recognized. It also provides the commission with an essential tool in moving towards a more harmonized, responsive and cost-efficient regulatory regime across Canada.

There are many to be thanked for the extraordinary effort that has resulted in the bill coming before you today: firstly, of course, the task force, for the open and thorough process through which they've managed to compromise—and I say that in the best sense of the word—various points of views in order to balance effectiveness and restore the commission's ability to regulate with rigorous safeguards, including ongoing legislative oversight and involvement; the securities industry—and



I use that in the broadest sense to include professionals—which is truly an engine of this province's economy and recognizes the importance of an effective and responsive regulatory regime in order to maintain a vibrant financial services sector in this province; the minister, who, persuaded of the need for reform, was prepared to wade into waters in which few political leaders choose to tread and who steered a steady course for this process; and to each of the parties for taking the time to hear the concerns of all interested parties affected by this legislation and deal with this important legislation in an expeditious and non-partisan manner.

The last year has been an education for all of us. Bill 190, if nothing else, I think essentially reflects the importance to effective securities regulation of input and support from markets, participants and the Legislature, through the political process. For institutions such as the commission, this depends in large measure on the clear articulation of priorities and on openness and responsiveness to various constituent groups. These attitudes and actions, coupled with the right tools, which I think Bill 190 provides, are the key to the ability of the organization to do a difficult job well. This has been the legacy of the commission and the basis upon which we hope to continue to enjoy your confidence and trust.

**The Chair:** Thank you, Mr Waitzer. We have approximately seven minutes per caucus. We'll start with Mr Sutherland.

**Mr Sutherland:** Thank you very much for appearing today. I was wondering if you could just elaborate a little bit as to what some of the problems have been for the commission since the initial Ainsley decision in terms of how that has affected your role to regulate certain areas.

**Mr Waitzer:** I think Phil probably summed it up best when he talked about a proposed amendment in his submission that would in effect provide immunity for those who have relied upon rulings or other regulatory instruments that the commission has invoked. Most of the policy statements, rulings, blanket orders that we're talking about are designed to facilitate efficient market operation, and to the extent that there is any uncertainty as to the effectiveness of the regulatory framework, it becomes very difficult for market participants to feel comfortable operating in the context.

**Mr Sutherland:** Another question: I was wondering, with this new legislation, Bill 190, in terms of some of the new requirements that are put on to the commission in terms of its reporting to the Legislature, the five-year review, those types of things, how you think that will affect your relationship with the public, the government and the Legislature.

**Mr Waitzer:** When I said that this year has been an education for all of us, I was quite genuine. No one welcomes accountability. The reflexive response is always against accountability, and as you well know, many of the proposals advanced by the commission to the task force were rejected by the task force. I think the process has been an educative one for the commission. I think we have embraced the accountability proposals and I think it will prove a very healthy discipline for the regulatory process at large, and that extends, as I pointed out,

beyond Ontario, because Ontario in many ways in this instance is setting the lead for other jurisdictions. British Columbia has announced its intention to adopt rule-making. Alberta has indicated that it hopes to do so this spring. So there's a domino effect.

**Mr Sutherland:** How much time do we have left?

**The Chair:** You've got about four minutes.

**Mr Sutherland:** I'll let Mr Wiseman go ahead then.

**Mr Jim Wiseman (Durham West):** Thank you. You made a comment there that sort of piqued my interest about why we should reject Mr Anisman's submission. Your comment, and I'm going to give you an opportunity to clear this up, seemed to imply that we should reject his recommendation because it goes to a level of technical detail that is beyond what is necessary. It seems to me that what you're saying is that we should be excluding his comments because they take it to a technical level and that that's the reason we shouldn't accept his submission, because he's too well versed and others maybe are not. I'd like you to perhaps clear that up for me.

**Mr Waitzer:** If that's what I was taken to have said, I misspoke. What I intended to say with respect to his proposal on judicial review is that I fundamentally disagree, and I believe that most others who have considered this carefully fundamentally disagree as well.

When I talked about fine-tuning and technical details, when you get into the rest of the submission that I had a chance to read yesterday, there are many small technical details that he addresses. My point on those, without commenting on whether I agree or disagree, is that I don't think this is the appropriate forum in which to be dealing with those kinds of minutiae.

But judicial review, and some of the other proposals that Phil has put forward, are not what I would characterize as technical details, and with respect to those I obviously disagree.

1620

**Mr Wiseman:** As a historian, I have often found when I read through the history of what people have said that some of those people who are swimming upstream alone may be closer to being right in their evaluations than some of the group who are going downstream en masse. What can you say to convince me, because you've already recognized Mr Anisman has considerable technical expertise in this area, to suggest to me why it is that, given the historical precedents that I could name—I don't have time to—perhaps the person swimming upstream might be right and the people going downstream might be wrong?

**Mr Waitzer:** We could have a debate on political theory here, and the role of the Legislature.

**Mr Wiseman:** This isn't political theory, this is—

**Mr Waitzer:** But let me correct, I think, your basic precept. There are few who have had as much input, and constructive input, into this bill as Phil, perhaps none, other than the commission itself, and in many areas Phil's views have prevailed over those advanced by the commission. I don't think it's fair to characterize Phil as swimming upstream, because Bill 190 to a large extent, and to his credit, reflects views that he has advanced.



What we're now talking about is views Phil put forward that weren't accepted in this process of trying to achieve a balance. Phil doesn't think we've got the right balance, and he's reproposing them and proposing a few new ones at this stage, having had the benefit of seeing the legislation.

The ones he is reproposing that are substantive I think it would be folly for this committee to accept without having had the benefit of all those others, many of whom are equally erudite in securities laws and don't carry any particular brief for the securities commission. It just defies the process the task force was designed to invoke.

With respect to some of the lesser and more technical ones, those I characterize as fine-tuning, and I think even Phil agreed in his submission to you those are not essential to be dealt with today. They're not going to go to the effectiveness of this legislation.

**Mr Crozier:** Mr Waitzer, there was a reference in one paragraph in your letter that under SRO membership—someone had indicated that they had had difficulties, his firm had had difficulties, in becoming a member of the Toronto Stock Exchange, and you pointed out that there was a way to have this reviewed. Just in general terms, what would be a problem that a company may have in becoming a member of the stock exchange?

**Mr Waitzer:** It's hard to speculate.

**Mr Crozier:** You referred to a specific instance.

**Mr Waitzer:** Let me give you the context to that. Mr Ornstein and Mr Bregman met with me a year ago, shortly after I assumed my current responsibilities, and talked about their desire to become members of the self-regulatory process, and I encouraged them to do that. There are obviously costs. For instance, becoming a member of the IDA involves higher capital requirements than not, than being a broker-dealer. There are costs to membership, because you're sharing in the costs of the self-regulatory system.

When I saw the letter, and indeed when Mr Bregman approached me after this morning's session saying, "Some of us are trying to become members of the stock exchange or the IDA but they don't want to let us in," my response then and my response today was that the commission, by statute, has oversight responsibility with respect to self-regulatory organizations. Anyone who feels aggrieved by a decision, or indeed the lack of a decision, by the stock exchange or the IDA has the right to have that decision reviewed by the commission.

I encouraged Mr Bregman this afternoon, and I tried to encourage here, if what they are complaining about is that they feel they're being blackballed from membership in the IDA or the TSE, they should be addressing that complaint to the commission and the commission would have a statutory responsibility to deal with it.

What I heard from the IDA and the stock exchange this morning was that that isn't the case and that in fact several broker-dealers have in recent years become members of the IDA or the TSE.

I'm not answering your question because it's very hard for me to—I don't know what the barrier is, and the only way I will find out in my institutional role is if one of

them comes forward saying, "We have tried to become a member, have been denied, and we think we've been unfairly denied the opportunity to become a member." That has not occurred.

**Mr Crozier:** Well, I think you've partially answered it. My concern is with firms that don't want to, or appear not to want to, belong to an SRO. If this legislation that's being proposed overregulates them, then I suggest maybe that should be the case, if they don't seem to want to belong to an SRO.

**Mr Phillips:** On the other subject that was raised a lot this morning, that is, treating the penny stock people with exactly the same rules as anyone else—I'm paraphrasing it—I think their recommendation to us is an amendment to the act that says that the rules must apply to everyone; the same rules for selling penny stock apply to everyone.

In your response to them, you essentially said that that's overly complicated—I'm paraphrasing; you can tell me what you've said here in other language—and that their recommendation would make it very difficult to operate and your recommended approach, if they believe a rule you have brought forward is inappropriate or wrong, is that they have the mechanism of appeal and that's the route you recommend. Can you help us out by explaining more thoroughly the problems you see with their proposal? They called it the equal rights proposal.

**Mr Waitzer:** It's actually not a mechanism of appeal, because they would have opportunity for input both to the commission and at the political level before the commission ever invoked a rule. Remember that rule-making is at minimum a six-month, very public, very visible process here. Appeal is once the rule is invoked. They'd have opportunity for input in advance, and I agree with the submissions made this morning that that is the right time. It would be quite extraordinary for the Legislature at this time to circumscribe in this one narrow area, because it really defies the whole notice and comment process that the legislation otherwise provides for.

The other answer was really Mr Crozier's, that if you accept the logic of equal treatment, then presumably what we should have is a rule requiring all dealers to be subject to the same regulatory regime. If you're talking about level playing fields, the same regulatory regime for dealers would be membership in a self-regulatory organization, subject to the requirements to make contributions to the Canadian investor protection fund.

One of several factual errors Mr Finlay made this morning was he said that no client had suffered a loss at the hands of a securities dealer. I've only been at the commission a year, but I was involved on behalf of shareholders in the failure of one securities dealer, Durham Securities, within the last two years where substantial client losses were incurred, and of course those losses aren't protected by the Canadian investor protection fund. They'd be subject to capital requirements; they'd be subject to audit requirements; they'd be subject to the know-your-client requirements imposed by the self-regulatory—so if we're really talking about level regulation, that's where the logic takes you to.

The point I was trying to make in my letter was that to the extent that the Legislature in its wisdom has decided



that there should be a category of registration for those who don't want to bear that cost—and there may be reasons. One of the reasons may be to promote junior resource financing; that's not my decision—then surely there has to be the ability to tailor the regulatory requirements to that particular class of registrant, subject of course to the notice and comment and political accountability regime built into Bill 190.

**Mr David Johnson:** Thank you for your presentation this afternoon. To follow up on this last issue of the so-called equal rights amendment clause, you're appealing the striking down of policy 1.10. If you lose that appeal, is it your intention to reinstitute that policy as a rule?

**Mr Waitzer:** I've been at the commission now for 13 months. There has been no discussion at the commission level of reintroducing policy 1.10. There has been discussion about the merits of the litigation, but there has been no discussion—so at this stage there is no initiative under way to reintroduce policy 1.10. I can't tell you what the commission will do because I'm only one voice on the commission, and of course I wasn't there when policy 1.10 was originally formulated.

1630

**Mr David Johnson:** If the appeal is successful, presumably policy 1.10 is still in force, but I don't know what happens with regard to Bill 190. Would policy 1.10 then automatically become a rule?

**Mr Waitzer:** If the appeal were to be successful, policy 1.10 might be enforced, but of course it would only be a policy, and Bill 190 makes that quite clear: It's only a guideline; it has no mandatory effect.

**Mr David Johnson:** In your view, if the equal rights amendment, as the securities dealers call it, were put in where they would wish it to be, who would be most disadvantaged by that? I guess I'm putting words in your mouth, but would it be the customers of the securities dealers because protection would be lost?

**Mr Waitzer:** I think it would derogate substantially from the integrity of the regulatory process, because you're really circumscribing the ability of the commission to do its job without knowing ahead of time what the commission thinks is appropriate. Surely the right way to do it is to wait until the commission says, as Bill 190 requires: "Here is what we are proposing. Here is why."

**Mr David Johnson:** I understand all that; that's kind of a general approach. But who in your view would be at the greatest disadvantage if it were put through?

**Mr Waitzer:** I think investors will be disadvantaged and ultimately it will impose more costs on the system.

**Mr David Johnson:** Would the members of the investment dealers association be disadvantaged at all?

**Mr Waitzer:** When investors are disadvantaged everyone is disadvantaged, because to the extent that investors lose confidence in the integrity of the system they tend to flee the market.

**Mr David Johnson:** A lot of this paper has come at the last moment; I'm just about swamped by it. Have you actually seen Mr Anisman's proposal regarding judicial review, the specific amendment?

**Mr Waitzer:** I read it last night, yes.

**Mr David Johnson:** The first part of it says, and it's an addition of a section 2.2 to the bill, "A person or company affected by a rule made by the commission may appeal to the Divisional Court."

**Mr Waitzer:** Sorry. Can you take me to the page number?

**Mr David Johnson:** Near the top of page 16. "A person or company affected by a rule made by the commission may appeal to the Divisional Court." I'm asking you to forget about the proportionate concept and all of that—just the concept that a person could appeal a rule to the Divisional Court.

**Mr Waitzer:** My understanding of the law as it stands today is that a person affected by a rule may appeal to the Divisional Court. There's a judicial review of any commission action to the extent that the commission's action exceeds the authority conferred upon the commission by the Legislature, so that's already there. Subsection 10(1) is really just a preamble to what follows.

**Mr David Johnson:** So we'd flip over to the next page, and I guess that's clause (b) you're talking about. Could today a person raise an appeal on the basis that it is "arbitrary, capricious or an abuse of discretion," which is clause (a)?

**Mr Waitzer:** Isn't that really what happened with policy 1.10? The basis for the appeal in policy 1.10 was that the commission had exceeded its jurisdiction and had abused its discretion.

**Mr David Johnson:** Which is "arbitrary, capricious or an abuse." Help me out here, then. How does Mr Anisman differ from what's actually in place today?

**Mr Waitzer:** What Mr Anisman is trying to introduce is this proportionality concept, which in fairness is a concept that has been developed, I gather—and I learned about this at this Queen's seminar—in the law in the United Kingdom. It is developing in Canadian constitutional law, but it's quite novel.

**Mr David Johnson:** We're going to run out of time. This is one of the problems of only having a few minutes on a Thursday afternoon.

That is introduced in subsection (7), as I understand, and Mr Anisman has said, "If you must, strike (7) out." I see him nodding his head now in agreement. If we remove (7), what's left? How does it differ from what any citizen essentially has the right to do today?

**Mr Waitzer:** My question would be, what does it add? Phil is much more oriented in administrative law than I am, but my concern would be that two other academics and experts in this field, Dean Whyte and Hudson Janisch, both vehemently disagreed with the notion of building an additional statutory level of judicial review into this bill.

**Mr David Johnson:** But what's puzzling is that you say it already exists.

**Mr Waitzer:** But the concern is that we're adding new words that may redefine, or certainly create uncertainty in the common law as it stands today. It's not clear what the need for that is absent the proportionality test



which Phil adds to his section.

**Mr David Johnson:** Can I ask you about the TSE's statement this morning? "Many investigations conducted by the CSC dealing with significant problems such as insider trading and market manipulation and forwarded to the OSC for action simply cannot be followed up due to lack of investigative and enforcement resources." That's very worrisome for me, and I wonder if you'd comment on that statement.

**Mr Waitzer:** It's worrisome to me as well. I think the commission's enforcement branch is recognized as a worldwide leader and has brought some enforcement cases, as recently as the last two years—I'm thinking of the front-running case, Biscotti, the Gordon Capital case—that are recognized world-round as trendsetters in terms of securities enforcement.

There is no question that the commission is severely underfunded, and at this stage we have to be selective in our enforcement proceedings. The minister is aware of that and the minister has indicated his interest in addressing the issue in a constructive way. And it's an issue that goes broader than enforcement; it's an issue that really goes to appropriate funding for securities regulation. That is a matter under consideration right now.

**The Chair:** Our time has expired. I want to thank the Ontario Securities Commission for making its presentation before the committee this afternoon.

Our next order of business is clause-by-clause consideration, but we're going to take a five-minute recess to prepare for that.

*The committee recessed from 1637 to 1648.*

**The Chair:** The committee will come to order. We'll continue with clause-by-clause consideration of Bill 190.

The first consideration will be that of section 1. Any discussion with respect to section 1 of the bill?

**Mr David Johnson:** Mr Chair, we can do this section by section, but there are a couple of key points, and I wonder whether it would be more instructive to have the government's view up front on those couple of key points, and then we can use our time more productively.

I know we have the government's amendment, which I presume will be passed. Beyond that, can I ask the parliamentary assistant about the so-called equal rights amendment, obviously one of the major points we've talked about today, that has been put forward by the securities dealers. In their view, and I think they've expressed this quite well, this would create a level playing field with their members and with the members from the investment dealers association, for example.

It would be an amendment later on, paragraph 143(1)14, that goes, "But no rule regulating, trading or advising in penny stocks shall be made unless it applies equally to all registrants who trade or advise in penny stocks." I wondered what the government's response to that proposed change would be.

**Mr Sutherland:** I guess the response of the government is that while it has been proposed as an equal rights amendment, we would support the testimony we've heard today, which indicates that what's being proposed is not really an equal rights amendment because the playing

field that has been portrayed by the securities dealers isn't the actual playing field we've heard evidence about.

We've heard from several of the groups today—the stock exchange, the investment dealers—who suggest that their standards of being a self-regulatory organization implies a much higher level of standards, and also the sense that they do actually do enforcement and compliance to adhere to those standards. We heard evidence that the securities dealers do have standards—I believe there was some evidence presented that they do have a code of ethics and a bill of rights for investors—but there's no actual enforcement or compliance.

The points I made in some of my questions to the securities dealers and the others was that their not being self-regulatory organizations and the commission having the authority to bring in regulations regarding some of those areas because they're not self-regulatory organizations does help bring it up to a level playing field. It would be our view that, while it's called an equal rights amendment, it's not really presenting equal rights.

**Mr David Johnson:** Then I assume that means the government will not support that. Both sides of this issue have put their thoughts quite well. There's obviously a need to protect the market system and ensure that there's integrity in the system. I know that those who speak on behalf of the bill in its present form have that foremost in their thoughts. I know the securities dealers are attempting to deal with their situation, to maintain a business. It's a difficult situation for them, so they've put their thoughts forward as well, but I gather that, on balance, the government has decided not to support that.

The only other one that really was contentious, and I'd ask the parliamentary assistant for his comments, was the suggestion by Mr Anisman with regard to a judicial review. That would be contained on pages 16 and 17 of his submission minus subsection (7), I suppose, which would be the proportionate concept. If that was excluded, but the possibility of a judicial review was instituted as an addition to the bill, what's the government's position on that? Is the government supportive of that position?

**Mr Sutherland:** The government is not supportive of that position. While Mr Anisman put forward a very strong argument, we've also heard that other experts in the field would say that a judicial review at this stage is not necessary because, without it being explicitly in there, you still have the ability to go forward for a judicial review process if they feel that the commission is going beyond its scope of regulatory authority.

While Mr Anisman has put forward that argument, the response is, what impact will it have? Is it adding any more sense of accountability? The argument we've heard is that, no, whether or not you have it in the legislation really does not ensure that. Mr Johnson, you and your colleagues talk a lot about having unnecessary regulations and legislation. If it's not going to have at this time a foreseen positive impact, is it necessary to put it in there? We'd put forward the case that it's not.

**Mr David Johnson:** Again, there are obviously two points of view on this, and I think both points of view have been well expressed today. Certainly Mr Anisman has expressed his view, but I don't think he's alone. Mr



Bruner—who was here earlier and may have left by now; I don't see him here—is also expressing somewhat the same sentiments in terms of the authority of the OSC and perhaps the necessity for a judicial review. Mr Anisman has put forward other views too, about confidential information and the broad powers that are contained in this bill, so certainly that opinion has been put forward and expressed well.

On the other side, many speakers have indicated that the bill in its present form is highly supportable and we don't need any further appeal mechanisms other than what exists today, plus the fact that the whole procedure is being made “transparent,” which will give the public the right to be involved and will protect all who need to be protected.

There certainly are two sides to that issue, but I just wanted to establish up front where the government is coming from.

**Mr Sutherland:** Could I just add one comment? Also at this time, as we're having this discussion, I think it's fair to repeat the comment we heard today, that Bill 190 should not be seen as a comprehensive review of all the activities of the securities commission, its mandate, its principles etc, that this bill is designed to look at one part of that; of course that is to ensure it has the regulatory authority to do some of the things it needs to do in terms of regulating the markets.

As further discussions occur, as certain rules and policies are put forward for public comment, there may be a growing sense, as part of those comments, that some of these other issues should be looked at. That may require the government in the future to say, “Maybe we want to take a look at those other issues as well.”

**Mr David Johnson:** To your knowledge, does the government or the ministry have any plans at present for an overall review?

**Mr Sutherland:** No, I'm not aware of any formal commitment that's been made to undertake a formal review of the entire activities of the commission and its principles and mandate.

**The Chair:** Are there any further general discussions with respect to Bill 190?

**Mr Phillips:** I think it's a bit of a challenge for the Legislature. Our party at least, and I think all parties, feel a sense of responsibility to move quickly on this bill. We've heard from many that if we don't have it in place, we at least run the risk of undermining the credibility of our securities industry. So we're supportive of the bill but appreciate that there are some people who have raised some legitimate flags, caution flags at least.

Assuming the bill passes, which is not a bad assumption, the commission's going to have a responsibility to be, as I'm sure it will, cautious about the power we're giving it, because we have to protect people who may be looking for some protection. I think we're giving the commission some fairly strong authority, and I think we're persuaded to do that on the basis of the need for a strong regulatory framework for it, but with that goes a heck of a big responsibility. I guess I believe that if it's abused, the Legislature can always act on it. We don't

have to wait five years if we've done something that we haven't anticipated here.

I really appreciate the delegations that have come to us with their concerns about it. Phil's obviously an expert in the area and he raises judicial review. As I know a little bit about it—not a lot about it, but a little—I think I'm persuaded by the argument of not pursuing judicial review, just because of my own view that if there are too many avenues available for constant second-guessing the commission, we run the risk of bogging ourselves down, and if the commission is not performing its role, I think we fix the commission.

The last thing I'd say is that it's difficult to deal with an issue like this in such a short time frame. The government probably appreciates that the opposition would appreciate a little more time on an issue like this, but I understand why we're doing it. I personally, and many of us I think, will be monitoring this as it heads down the road, watching carefully the securities commission to see it'll do the fine job I'm sure it will do.

**The Chair:** The Chair would like to proceed expeditiously now with clause-by-clause. If there are any sections about which members would like to raise specifics, please let me know.

Shall sections 1 to 7, inclusive, carry? Carried.

We have an amendment to section 8.

**Mr Sutherland:** I move that subsection 143.1(1) be struck out and the following substituted:

“Deemed rules

“143.1(1) Every order and ruling of the commission and every policy relating to an order or ruling that is listed in the schedule shall be deemed to be a rule validly made under this act and to have come into force on the day this section comes into force.

“Amended orders or rulings

“(1.1) For the purposes of subsection (1), a reference to an order, ruling or policy, whether or not it is referred to in the schedule as amended, is a reference to the order, ruling or policy as it existed on November 16, 1994.”

Apparently, as the legislation was done up, some of the 46 items listed in the schedule make reference to being “as amended” and some of them don't. We wanted to make it clear that it is to be as those areas had been amended over time. That's the nature of and the reason for this amendment.

**The Chair:** Mr Sutherland has moved a government amendment. Shall the motion carry? Carried.

Shall section 8 as amended carry? Carried.

Shall sections 9 to 11, inclusive, carry? Carried.

Shall the title carry? Carried.

Shall the bill, as amended, carry? Carried.

Shall I report Bill 190, An Act to amend the Securities Act, as amended, to the House? Agreed.

Thank you very much.

There will be a subcommittee meeting next Wednesday; further details will be forthcoming. This committee stands adjourned.

*The committee adjourned at 1703.*







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### **Substitutions present/ Membres remplaçants présents:**

Crozier, Bruce (Essex South/-Sud L) for Mr Kwinter

Waters, Daniel (Muskoka-Georgian Bay/Muskoka-Baie-Georgienne ND)

### **Also taking part / Autres participants et participantes:**

Sutherland, Kimble, parliamentary assistant to Minister of Finance

**Clerk / Greffière:** Mellor, Lynn

**Staff / Personnel:** Yurkow, Russell, legislative counsel



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## Legislative Assembly of Ontario

Third Session, 35th Parliament

## Assemblée législative de l'Ontario

Troisième session, 35<sup>e</sup> législature

# Official Report of Debates (Hansard)

Tuesday 6 December 1994

# Journal des débats (Hansard)

Mardi 6 décembre 1994

**Standing committee on  
finance and economic affairs**

**Comité permanent des finances  
et des affaires économiques**

**Municipal and Liquor Licensing  
Statute Law Amendment Act, 1994**

**Loi de 1994 modifiant des lois  
en ce qui a trait à la délivrance  
de permis d'alcool et à la délivrance  
d'autres permis par les municipalités**

Chair: Paul R. Johnson  
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## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
FINANCE AND ECONOMIC AFFAIRSCOMITÉ PERMANENT DES FINANCES  
ET DES AFFAIRES ÉCONOMIQUES

Tuesday 6 December 1994

Mardi 6 décembre 1994

*The committee met at 1002 in committee room 1.*MUNICIPAL AND LIQUOR LICENSING  
STATUTE LAW AMENDMENT ACT, 1994LOI DE 1994 MODIFIANT DES LOIS  
EN CE QUI A TRAIT À LA DÉLIVRANCE  
DE PERMIS D'ALCOOL ET À LA DÉLIVRANCE  
D'AUTRES PERMIS PAR LES MUNICIPALITÉS

Consideration of Bill 198, An Act to amend the Liquor Licence Act, the Municipal Act and the Regional Municipalities Act and certain other statutes related to upper tier municipalities / Projet de loi 198, Loi modifiant la Loi sur les permis d'alcool, la Loi sur les municipalités, la Loi sur les municipalités régionales et certaines autres lois ayant trait aux municipalités de palier supérieur.

**The Chair (Mr Paul R. Johnson):** Today we are dealing with Bill 198. We have a number of witnesses scheduled to be before the committee this morning and this afternoon.

KYLE RAE

**The Chair:** Our first presenter is Kyle Rae, a city councillor from ward 6. If you would come forward, make yourself comfortable and whenever you are ready, you may proceed.

**Mr Kyle Rae:** I had hoped there would be more members of the committee here.

**The Chair:** They'll be here very shortly. We have tight time constraints, so we're going to start regardless.

**Mr Rae:** That's fine. We have the same problems at city councils.

This has been a problem that I've been dealing with since I was elected back in 1991 and I'm very pleased to see that it's now being responded to. This legislation will allow the municipalities to protect the neighbourhoods that are being violated, and I would say many of our neighbourhoods are bleeding because of the problem of the maintenance of businesses that are catering to certain kinds of activities.

I was very proud to have Rosario Marchese, the MPP for Fort York, bring forward the private member's bill. He represents part of the area that I represent at city council. He and his staff and my staff have been working to try and find ways of tightening up the regulations so that we get some responsibility on the part of some businesses that decide that flouting the law is far too profitable to put aside.

The Metropolitan Licensing Commission for many of us was seen to be the best way to bring authority to the operation of businesses. However, we found that they were not very effective. They were good at issuing

licences and providing Metro with a sound source of revenue. However, in terms of monitoring businesses and in terms of enforcing business licences, we found that they were quite lacking.

Bill 198 will allow area councils to request a hearing by the commission, request that conditions be placed on the licensee—in particular the issues of hours of operation are very important—and request that the Metro licensing commission revoke a licence.

One of the problems of the current Metro licensing commission standards is that there's this interesting term, "honesty and integrity." I don't know how one goes about measuring that. We have businesses downtown which have consistently ignored the police, the Metro licensing commission and the municipality in the operation of their licences.

Many of you probably live downtown when you're here in the city of Toronto and you may be familiar with Isabella Street. There's a bar at the corner of Isabella and Yonge which did not have a liquor licence for many, many months but continued to operate after hours. The liquor licensing control board would not go in because they didn't have a licence. The police would go in. They might take the liquor, they may take the taps, and the next day the owner will have new taps and more liquor and would continue to operate regularly, day after day, night after night, without a liquor licence.

There needs to be a way of padlocking the doors of operators who refuse to comply with the regulations of the LLBO or the Metro licensing commission. That same bar has had many infractions against it. Since February 1992, there were 52 charges laid against this bar. There were 35 criminal charges laid since January 1990 inside or outside the bar. These charges included drug offences, threatening death, assault, assault causing bodily harm, mischief, obstructing police, causing a disturbance, theft under \$1,000, indecent acts, theft over \$1,000 and breaking and entering, and they're still operating today.

What do you have to do to stop this kind of behaviour happening in bars? We are unable to shut them down. The police are frustrated, the municipality is frustrated and we have no mechanism to bring to a close the operation of a disreputable business operator. I would ask you to think about taking the next step. We need to find a way of closing the door on some of these businesses.

There is another incident that happens in the ward which is the operation of businesses that you would not think were involved in illicit activity but that in fact are purveyors of crack cocaine. One that's had some press is

the Pioneer Donuts shop at the corner of Jarvis and Dundas. One of the owners of that doughnut shop was arrested more than two years ago and she's as yet to be sentenced. She was arrested two years ago for trading in crack cocaine and she was found guilty about six months ago, but we still haven't got a decision on what her sentence will be.

This is an indication of the problem of dealing with businesses. It seems that the province has taken a hands-off attitude in some respects and given the benefit of the doubt to many businesses, but in fact we are finding more and more businesses that are finding the economic climate so difficult that being presented with the alternative source of revenue is too enticing. They fall into it and it's difficult to blame them, given the stress that they may find themselves in, but in fact what they are doing is turning on the neighbourhood, they're turning on the residents whom they depend on and we're finding that they are part of the disintegration of the downtown neighbourhoods.

What I'm very pleased to see is that there's an attempt on the part of the government to regulate these businesses. However, I would ask that you think about taking a further step and giving either the LLBO or the police or the Metro licensing commission the ability to stop the operation of a business. You may have to padlock the doors. It may be distasteful to do that, but if you've got a chronic problem and a problem that's creating the kinds of incidents that I've read to you, there is no other way to deal with it.

1010

I'm wondering if, instead of using the term "honesty and integrity" which, as I said, is pretty difficult to measure, there may be some sense in using something like "community standards." What we have in some of the downtown neighbourhoods is quite a mix of residential and commercial and we need to find a way of balancing the residential and commercial. They often end up being in conflict, especially around the issue of noise.

It's quite disappointing that the LLBO will not take into account the problem of noise when it is looking at the reviewing of liquor licences. Noise, I think, for most of the people in the downtown, is a far greater problem than extending the liquor hours to 2 o'clock. They would not mind the extension of liquor hours to 2 o'clock or 3 o'clock in the morning. What they have a problem with are operators who are prepared to crank up the volume of their disco and the noise bleeds into the street and it bleeds into their apartment buildings. I would ask you to consider adding to the jurisdiction of the LLBO concerns around noise. I would suggest to you that the bars and discos are one of the most chronic problem noise sources that we have in the city. They may not be a problem in rural Ontario, but in downtown Toronto they are a significant problem. If you have the opportunity to look at that part of the LLBO regulations, noise is a considerable problem.

The municipality of Toronto does not have great powers in being able to shut down these businesses. As I've said, since 1991 I've been working on this issue and all I've got in my hands to deal with are the public health

officials, the building inspectors and the fire department. What we end up doing is just harassing businesses that are probably dealing in drugs and we have found or the police have found them to be dealing in drugs or after-hours activities. We have no way of dealing with them head-on with the issue at hand. We have to then send in these other officials who harass them about cockroaches or harass them about not having a fire extinguisher and we can't really get at the major problem in front of us. So I think this piece of legislation is helpful.

I have in front of me the health inspector report from a diner on Dundas Street. The report from the public health department said there is limited food handling; the restaurant serves a few orders a week. This is a restaurant. We know that they were involved in crack dealing, but there was no way for us to get at that problem. We had the police go in and the police would just catch people as they came in and out, but we couldn't shut down the business. What we need is the ability to shut down the businesses that are creating the shopping centre of crack in the city, which is the corner of Jarvis and Dundas.

With those comments, I would hope that you would look at moving to a more responsible regime for the Metro licensing commission and the liquor licensing board. They can't merely grant a licence, wash their hands and hope that the operators are going to do the right thing. They need to have a regulatory arm. They need to be able to go out and assess what is happening. We need the ability to shut them down if they are not going to play by the rules of business. Far too many businesses are moving into the illicit trade of crack cocaine and other drugs in the downtown area and we need the legislation to stop it.

**The Chair:** Thank you very much for making your presentation before the committee this morning. I remind committee members that we have about 20 minutes per presenter and we have about eight minutes left right now. You will have realized at this point that we have the minister with us before the committee this morning. The minister indicated to me that he wanted to make a comment. Is that right?

**Hon Ed Philip (Minister of Municipal Affairs):** I would just comment, Councillor, that section 4 in fact does give you the power to close down the operation. Furthermore, under other sections of the bill, I believe it's section 18, failure to pay the fines that would result from your operations would allow them to seize your equipment, so I think you'll find you have some additional tools that would remedy the kinds of situations that you've talked about.

**Mr Rae:** In section 4, does that apply just to liquor-serving operations or does that include any business?

**Hon Mr Philip:** All municipal licence infractions.

**Mr Rae:** Thank you. Then that is what I'm looking for.

**Hon Mr Philip:** Good.

**Mr Rae:** What happened, Minister, is that the MPP for Fort York and myself, working with the residents in the east downtown, were working on this issue, not so



much on the issue of liquor operations but on just businesses that were ending up in the drug trade. Then, when the issue of the shootings happened in North York or the northern part of Toronto, the caravan seemed to move and swerve into another direction when we had been working quite successfully with the neighbourhood in the area of problem businesses, not problem liquor outlets. I was worried that we were losing that part of the agenda and it was being taken over by the after-hours clubs.

**Hon Mr Philip:** I wouldn't have lost that in the bill.

**Mr Rae:** Thank you. I'm glad to see it's there.

**The Chair:** We have just a little more than two minutes per caucus.

**Mr Tim Murphy (St George-St David):** Thank you, Mr Rae; good to see you. I wanted to ask one quick question about the troubles you've had in closing down business operations and the question of whether section 4 deals with it. Do you know how long a process it takes to convict a business owner who has a municipal licence, how long a process it takes to get a conviction for contravening a licence provision, and do you have any sense of how long that process would take before we could actually get an order closing the premises down? Do you have any sense of how long that would take?

**Mr Rae:** I don't think we've been able to do that in the three years that I've been on council, and we've been trying. We've been pursuing that. There has been an inordinate amount of reluctance on the part of the Metro licensing commission to review licences. Once they give them out, they've got their fee. What they're interested in is the fee, the licensing fee, and not the regulation of the business. The first thing is to start motivating the Metro licensing commission that it has got more than just a revenue source to operate, that it also has a responsibility.

As I said, in the case of Lydia Choi, who is the operator of Pioneer Donuts, she was arrested in November 1992, she was found guilty in 1993 or 1994 and she still has not been sentenced. That tells me it takes two years to move on an individual. Is it quicker to move on a business? I hope so, but I don't have any measurement of that. I've not seen a business being shut down yet.

We've got the case of Bar One. As I said, it had 52 charges laid under the Liquor Licence Act and 35 criminal charges laid against it, and it is operating today. So does it work? No. Will this work? I hope so, but I don't know how long it'll take to kick in.

**Mr David Johnson (Don Mills):** I appreciate the problem that you're dealing with, coming from the municipal scene myself: liquor, and now you're extending it to crack cocaine. I might say, with regard to noise, from my experience, that it can emanate from many different situations. I've had people saying we should close down pool halls because people gather around and they make a lot of noise around pool halls, and there's a business across the way that's some sort of stamping business that bothers people.

1020

But on this issue of being able to close down businesses, in my riding there was a police action just in the

last three months resulting in 30 arrests for drug dealing and many of my constituents, tenants who live in that area, say that a lot of the dealing was taking place in individual apartments—well, some actually after hours from a recreation centre that was nearby, when it was closed, but from apartments. I wondered, along the same lines that you're suggesting we should be able to close down businesses or the municipality through the licensing commission should be able to close down businesses, if it's proven that drug dealing is taking place from a particular apartment, should those tenants, all of the tenants associated with that—sort of equality here—be evicted from that particular unit?

**Mr Rae:** I have been working with the officers of 52 division on a regular basis and when people on Church Street see me and say, "I can't believe it, I've got a crack house in my apartment building, 807-100 Gloucester," I report that immediately to 52 division or 5 district drug, and within a week they've been in there, they've broken down the door and they're out.

**Mr David Johnson:** The tenants were evicted?

**Mr Rae:** They're out.

**Mr David Johnson:** So you would agree that the tenants should be evicted in a—

**Mr Rae:** They are a blight. They are a disease in our neighbourhoods.

**Mr David Johnson:** Okay. I'm glad to hear you say that.

**The Chair:** I'd just like to bring to the attention of any witness, and I'll mention it now, that information that's in the public domain is certainly something that can be mentioned, but if there's something pending before the courts, an opinion should not be raised with respect to that before this committee for reasons, I think, that are obvious.

**Mr Rosario Marchese (Fort York):** Mr Chair, the noise is rather high. I don't know if you could from time to time just remind everyone—

**The Chair:** I just remind all the people in the room that we would like some order in here so we can hear the witnesses and the members of the committee can clearly hear the information being exchanged. Thank you very much.

**Mr Marchese:** I welcome Councillor Rae here and congratulate him on all the work he has done in his ward and in our riding around this particular issue.

You raised a question around "honesty and integrity" and then proposed a different kind of standard, which is community standard, and I have to tell you that concerns me. "Honesty and integrity," in my mind, achieves a balance between the public and the business operators. If we then talk about community standards, that, as you know, is very loose, very fluid, very dangerous at times in terms of what some of those standards might be in some of those communities, because every community might have a different standard that needs to be interpreted and defined.

Do you think that whatever community standard is set by any community should be the standard that licensing bodies abide by, and do you think that might be a



problem, versus the language we have here that I think genuinely will get to the unscrupulous operator or the kind of violence that is happening in that establishment or around that establishment?

**Mr Rae:** I make the suggestion because I think the use of the term "honesty and integrity" reads to me as a hangover from the medieval period. It doesn't really mean anything. You can't measure it. It's in the perception of the commission what is honesty and what's integrity. In the same way, community standards is the same problem.

Why I'm responding to "honesty and integrity" is that for the last three years I've been dealing with honesty and integrity and I don't find it, and I don't find a way for the Metro licensing commission or the LLBO willing to go to deal with the term of "honesty and integrity." It's too fluid. They're fine principles and I wish we could abide by them, but in fact it's very difficult to nail them down and then move on the issue of honesty and integrity.

If you want to define them very clearly in terms of a business operation—what to a business operator should be honesty and what should be integrity, then define them.

**The Chair:** Mr Rae, I want to thank you very much for making your presentation before the committee this morning.

I remind witnesses that we have 20 minutes for your presentations and you may use all of that 20 minutes to make a presentation or leave some time for questions and answers from the committee.

ROB MAXWELL

**The Chair:** The next presenter is Rob Maxwell, city councillor, ward 11.

**Mr Rob Maxwell:** I want to thank you for the opportunity to appear before you to speak on this bill. I represent, as you said, ward 11 on Toronto city council. Ward 11 is in the west end of the city and it contains a number of communities that have been experiencing problems related to drug trafficking for a number of years now. I want to add my voice in support to the bill that's before you. In particular, I would like to endorse the amendments that relate to the municipal licensing powers.

As you know, restaurants and other similar businesses in neighbourhoods that are afflicted with drug trafficking all too often end up functioning as office space for dealers and their customers. In my ward, we've had on many occasions to go to the LLBO to try to have the licences of businesses that tolerate or encourage activity removed, and this is in spite of the fact that very often the offences in question have nothing to do with liquor infractions. In addition, of course, this approach does not allow us to deal with premises that don't have a liquor licence.

I would have to say that many people in my constituency have become very cynical about the power or the willingness of government to solve the kind of day-to-day and very serious problems they have had to live with for these many years. I think the amendments that are before the committee today will help to provide citizens of

Toronto and the entire province with a more effective tool for dealing with the job at hand.

There are three issues I would like to raise that I think need to be addressed, although it may not be possible to address those in the legislation. They may be done through regulation or simply through some kind of a policy directive coming from the ministry to the licensing commission.

The first is that the licensing commission should be directed, when requested and where appropriate, to hold hearings during the evening hours and in the communities where the businesses in question are located. I think this would allow for much greater community participation, both pro and con.

The second issue is that I think there needs to be some kind of a provision for anonymity for people who are raising issues with the commission. People, I have found on numerous occasions through my experience, are very afraid of coming up against a business where drug trafficking is involved and I think that's for a very good reason. It is very difficult for commissions and other decision-makers to really gauge what the public opinion is about a particular business when people are afraid to come forward and speak. I think people should have to be provided with some degree of comfort, that there are not going to be reprisals against them for exercising their democratic right to appear before a tribunal or a commission.

The third issue is that I think the commissions and the police have got to take a more proactive role in educating business on how to stop traffickers from setting up business in the first place. In my experience, most business owners do not want drug dealers operating out of their establishments, but they simply lack the knowledge or the resources to prevent it from happening. I think clearly it would be in everyone's interests if we could deal with problems before they start rather than try to correct them afterwards.

I want to finish by thanking, in particular, Rosario Marchese, the MPP for Fort York, for the work he's done in bringing this issue forward on to the political agenda. I know that can very often be a very difficult task. I just want to add my personal congratulations to him and to everyone else who has been involved in bringing the bill forward. I think it's a step in the right direction.

**Mr Gary Carr (Oakville South):** Thank you very much for your presentation and also your written presentation.

With respect to what's happening now, I take it you feel that there isn't enough power through the existing legislation to stop the problem right now?

**Mr Maxwell:** I frankly wouldn't purport to be an expert on the legislation. I think there has been a problem. Whether it's due to the legislation itself or the willingness, in my case, of the Metro licensing commission to act on the legislation, frankly I don't feel in a position to comment on that.

People in my community long ago gave up even attempting to approach the Metro licensing commission as an avenue for dealing with these problems, and



everyone in my community immediately heads towards the liquor licence board, which I don't think is the right approach. I think this is clearly a licensing issue that has to be addressed in those terms.

**Mr Carr:** I know you've said on page 1, "...we have on many occasions had to go to the liquor licensing board to try and have the licences of businesses...revoked" and so on. Maybe you could again just give us a little bit of an idea of what happened. Is it a case of them not having the resources to enforce it or they don't want to do it?

**Mr Maxwell:** Sorry. The liquor licence board?

**Mr Carr:** Yes.

**Mr Maxwell:** No, I have found, in fact, and I think residents of my ward would attest to this, that the liquor licence board has become far more sensitive in recent years to the needs of communities. They've taken to doing things such as holding evening hearings in the community, which I commented on. There is, in general, a much greater sensitivity on the part of the staff there to dealing with the community. I'm quite pleased with the recent change in direction that's occurred there, but the purpose of the liquor licence board is to deal with liquor-related matters, and what we're dealing with is not liquor. We're dealing with another substance, which is illegal, which is of course street drugs.

1030

**Mr Carr:** If I have a little bit of time, on page 2 you talked about: "The licensing commission should be directed, when requested and where appropriate, to hold hearings during the evening and in the communities where the businesses in question are located. This would allow for greater community participation, both pro and con." If that happens, what do you think the people in your ward would like to see happen with these businesses?

**Mr Maxwell:** I can't say in general. I think it is conceivable that people could complain about a business where in fact there is no illegal activity going on. That's certainly been known to happen before. But in my experience, again, with liquor licence hearings, I was quite surprised to find a number of people who would attend speaking in favour of a business, against the licence being revoked. My sense was the community would come out en masse and you would just get this very one-sided perspective on the issue but what happens, of course, is that the management of the restaurant then also gets an opportunity to bring out people who, for whatever reason, believe that the business should continue. I think you get a much more balanced perspective and I think that's important for licensing bodies to be able to hear truly what people can do.

In my community, it's a working-class neighbourhood, people simply do not have the kinds of jobs where they can take time off and go to some agency downtown or wherever to make their presentations. If you really want to get and if you're serious about having community input into these things, you've got to have hearings during the evening and you have to have them in the community.

**Mr Carr:** What about the police? Is it a case of

resources? As we know in this day and age with the amount of problems with crime, the police are stretched well past the limit. Is it a case of them not having the resources to do it, or do you think it is that they don't have the enforcement mechanism right now? Which is it?

**Mr Maxwell:** I would say probably both. Again, I couldn't comment in general. I could give you some anecdotal case-by-case information on that. Regardless of whether it's resources or legal mechanisms, I think these are reasonable amendments that help, that begin to get at the problem and I think they should be approved.

**Hon Mr Philip:** I just wanted to thank you and point out to you and Councillor Rae, who are concerned about the responsiveness of the licensing commission, that section 6 is a response to that. It will allow the lower tier, namely the city of Toronto, or in another region the city of Mississauga, or whatever, to make an application, and the licensing commission would have to respond back to the resolution passed by your council. That's an attempt in this legislation to give, if you want, people at the lower tier more control over the upper tier's licensing commission.

**Mr Maxwell:** Yes, I had noticed that, Mr Minister, and think it's a very useful addition. However, when we get rid of Metro, of course, you're going to have to deal with the question of devolving the licensing responsibility to the local municipalities—for another day.

**Hon Mr Philip:** I look forward to the other two parties giving me their views on that.

**Mr Gordon Mills (Durham East):** I'd just like to put it on the record for your information that the minister, meaning the Solicitor General, has met with the Ontario Association of Chiefs of Police, which is very, very pleased with the proposed amendments to this legislation and in so far as resources, they feel that this will allow them an early intervention before things get out of hand. I know, and you must be aware as a councillor in the city of Toronto, at one call there were 24 police cars there. When we talk in terms in resources, this will allow that earlier intervention to snuff it out before it gets out of hand and thereby the resources will be better managed.

**Mr Maxwell:** If I'm permitted to respond to a comment rather than a question, point well taken. The local police officers I have spoken with are pleased with these amendments as well; they're quite supportive. I think what you've said, though, just underlines the comment that I made that if we could get involved even earlier—and I think it's very important to be able to provide those business people who feel that a problem is imminent to try and deal with it before it takes root. That's an issue that I have written both to the liquor licence board and Metropolitan Toronto Police about, regarding liquor licences, and they are under way, I gather, developing a protocol for an educational package for liquor licence establishments. I think a similar process needs to be undertaken here.

**The Chair:** Mr Marchese, we have about a minute.

**Mr Marchese:** Welcome, Mr Maxwell. We share similar kinds of problems for many, many years and his ward, of course, is very close to mine and I'm as familiar



with his problems as he is with mine in my ward.

You raised a point. Minister Philip mentioned section 6, which allows the municipality by resolution to require the licensing commission to investigate an alleged contravention, and that's quite clear. But in terms of the point you make in your first point, that licence commission should be directed to when requested and where appropriate hold hearings during the evening, I think that is a useful suggestion. I don't know whether the minister was thinking section 6 also deals with this, but I'm wondering whether the municipality can simply do that on its own or whether the city can request Metro to do that.

**Mr Joseph Cordiano (Lawrence):** You don't need to put it in the legislation.

**Mr Marchese:** I didn't think you did, but is it that the city council can request that as well in a similar way?

**Hon Mr Philip:** No, but Metropolitan Toronto can certainly as part of their licensing provisions provide for that, and I understand they are in fact doing some of that already. I'm reluctant provincially to dictate to municipalities how they run their operations and I think that's a local decision that should be made based on local resources and not have us impose it on a local municipality, be it upper tier or lower tier.

**Mr Marchese:** Mr Philip, I agree. I think city council can make that request of Metro obviously to urge them to do so, so that—

**Mr Maxwell:** I look forward to quoting the minister in that regard and perhaps on other issues.

**Mr Cordiano:** I'd like to just make a brief comment and perhaps ask your opinion. Councillor Rae spoke about noise in his community and a concern around that; I would express a similar concern with respect to commercial avenues which are confined within residential districts, and the proximity of those establishments to residential neighbourhoods. Obviously there's a concern around noise and traffic and just the numbers of people entering into what amounts to a residential community for most intents and purposes.

Subsection 109.1(3) of the bill, which amends the Municipal Act, states that you cannot refuse to grant a business licence because of location, if the business was operating at that location before the licensing bylaw came into effect. In a sense we're going to entrap what exists already in those types of neighbourhoods where you have commercial establishments. That is going to be the case in most of downtown Toronto, but my concern is with after-hours clubs that will now be permitted to continue to exist. There isn't going to be an effort in this legislation to see that there is a distancing of those locales with residential neighbourhoods, which is an ongoing concern that I have.

I would like to have seen some provision made for the separation of those establishments away from residential neighbourhoods and into perhaps industrial or entirely commercial areas, rather than being immediately adjacent to residential neighbourhoods.

**Mr Maxwell:** My feeling is that it's important to distinguish between the use itself and nuisance that may

arise from the use, that after-hours clubs do not in all cases cause problems. When well managed they can very often be a useful asset to a community. I think what the legislation should concern itself with is dealing with situations where the management of the premises is not acting in the interests of the public and his or her neighbours. I guess there has to be a presumption of innocence in a sense here, that you have to allow a business to set up shop and operate and then be able to respond very quickly and very effectively if it is not playing by the rules.

1040

**Mr Cordiano:** I suppose there is a certain degree of compromising here with respect to the very realities of the city of Toronto. You are not going to be able to easily extract those business establishments from those residential neighbourhoods which are on commercial avenues. There is a difficulty in doing that; I understand that. But by the same token, there is a concern with establishments that, by their very nature of being in business, create that kind of noise and that kind of activity which happens in the wee hours of the morning, after-hours clubs being just one of those establishments.

**Mr Maxwell:** If I could cite an example here, there is an establishment that is not in my ward but is a few blocks away from my ward and very close to where I live. I forget the name of it but it's a very famous country and western club. It's at the corner of Dovercourt and College, near the West End Y, if you're familiar with that neighbourhood. It's been in operation there for, I believe, 20 or 25 years. It's a famous institution in country and western circles in the city. I frankly have never heard a complaint about the operation of that club and it has always been an after-hours club.

I think it's possible for these places to operate cleanly. Again, I think it's important at the outset that the managers of any business, whether it's a doughnut shop or an after-hours club, (a) be educated as to what their responsibilities are and (b) be given the resources and the assistance that's necessary to deal with problems at the beginning rather than at the end.

**Mr Murphy:** Just one quick question: Councillor Rae talked about the problems he had with the honesty and integrity provision and preferred something like "community standards" as a more basically understandable notion and one that a licensing commission might be more willing to act on than honesty, integrity. I wonder if you could comment reasonably quickly on that.

**Mr Maxwell:** Sir, I came in midway through Councillor's Rae's comments and so I didn't hear his argument around that. I think the public in general has trouble with connecting the concept of honesty and integrity with anything to do with government these days. It might be better to come up with a term that is not going leave all of us open to derision. But frankly, I don't understand the distinction between the one concept and the other.

"Community standards": It seems to me that has the potential at least for being overly restrictive in my mind, that basically what you would be saying is that whoever happens to show up for a particular hearing makes a decision, and I don't think that's appropriate. I think



there have to be guidelines that everyone understands and can live with.

**The Chair:** Thank you, Mr Maxwell, for making your presentation before the committee this morning.

ONTARIO CHAMBER OF COMMERCE

**The Chair:** The next presentation is by the Ontario Chamber of Commerce, Mr Joe Couto, policy coordinator.

**Mr Joe Couto:** Thank you very much for allowing us to have our say on the bill, on rather short notice, but always willing. We thank you for that. The Ontario chamber represents about 65,000 businesses in Ontario, with about 75% of our membership being classified as small and medium-sized businesses.

The chamber fully supports the objectives of Bill 198. As a community-based organization, we understand the needs of communities to ensure that problems associated with illegal activities such as the sale of drugs and alcohol after the legal closing time for businesses are dealt with promptly and effectively by governments and law enforcement agencies. As an integral part of our communities across the province, the Ontario chamber members clearly understand and share the desire of the government to rid their communities of this serious problem.

While we clearly support the objectives contained in the proposed legislation, we believe that some changes must be made to ensure that law-abiding businesses are not unjustly caught in the large net of the proposed legislation.

Again, we support the Ontario government's strong desire to address the problems caused by illegal activities occurring in business establishments. We also welcome providing law enforcement agencies with greater powers with respect to functions occurring under special occasion permits. However, the proposed legislation should be looked at closely with regard to the long-term impact it will have on law-abiding businesses. We are concerned that some proposed aspects of Bill 198 may negatively impact on these legitimate businesses which, we trust, are not the government's target in this legislation.

Many of our members who have contacted us regarding the bill have expressed a strong concern that the legislation will focus on regulating legitimate businesses instead of getting to the root of the problem, which is the illegal activities occurring in some business establishments in Ontario. We urge the government and this committee to seriously examine whether or not the problem is one of lax enforcement of existing legislation rather than one of needing yet more regulations and red tape for legitimate businesses to have to wade through.

We sympathize with municipalities and law enforcement agencies that have to deal with these illegal activities. It is not an easy job. However, we would like to be sure that all avenues for enhancing law enforcement of the existing laws and a full understanding of the phenomenon of after-hours clubs are explored before the government proceeds with more regulation for legitimate businesses.

We believe that somewhere between the time the

concept of the bill was developed and the actual drafting of the legislation, the focus has shifted from addressing the issue of stopping criminal activity in business establishments to focusing on the establishments themselves, whether or not criminal activities are actually occurring there.

Bill 198 has the potential to punish not just the perpetrators of illegal activities occurring in business establishments but the business as a whole by imposing conditions on a business licence or even suspending or revoking the licence.

The Ontario chamber urges the committee members to ensure that it is illegal activity that is the focus of the bill, not punishment of a business in which illegal activities may be occurring but which have nothing to do with the proprietors of the establishments, who are not participating in the illegal activities nor are even aware of such activities.

We believe that Bill 198 offers no assurances of uniformity in terms of how Bill 198 is applied across Ontario. Business operators may face different rules as different municipalities impose the bill differently. This adds to the frustration and confusion level for small businesses and is therefore counterproductive to encouraging streamlining of regulatory requirements which the government has recently acted on.

Again, the focus should be on illegal activities, not on broadening regulations under which municipalities issue business licences. Our members believe that municipalities should ensure that they are enforcing their current powers as effectively and efficiently as possible before being given the power to impose even more bureaucratic red tape on businesses already suffering from administration overload.

We recommend that municipal licence issuers who have doubts regarding the ability of an applicant to operate within the law simply not grant the licences at all. Placing conditions on a dubious applicant is inviting trouble, so a licence should only be granted to applicants who can ensure with relative certainty that illegal activity on the business premises is not a threat to the issuance of the licence.

The rights of the licence applicant to a speedy and fair hearing should also be ensured, as should safeguards for business owners who are not involved or are unaware of illegal activities in their places of business.

Many of our members have expressed frustration with the lack of action regarding the special occasion permits and the inability of the Liquor Control Board of Ontario to adequately restrict potentially dangerous SOP events. Essentially, the problems with SOPs are one of tracking. The LCBO does not adequately track applicants on an accessible computer system which allows the LCBO and law enforcement agencies to prevent a potential problem from occurring. Many after-hours clubs obtain SOPs as a means of doing business.

The Ontario chamber believes that by simply insisting that SOPs be issued only by municipalities where the event is being held and by implementing holding periods before the issuance of the licence to allow for a thorough



background check, many of the problems associated with after-hours clubs and the accompanying illegal activities could be addressed.

The question of adequate police resources for addressing this issue is one which the Ontario chamber is not in a position to comment on. However, we urge the government to provide law enforcement agencies with adequate powers to do their duty in combating illegal activities on business premises.

**1050**

The chamber supports the government's efforts to address illegal activities in business establishments. This legislation can be a win-win proposition for all involved—business, governments and local communities. We do not need to make this an exercise in simply allowing for more regulatory powers for municipalities without addressing the fact that it is illegal activities that need to be addressed.

We find that Bill 198 needs to be refocused on this all-important objective. Our members, like the overwhelming majority of Ontario businesses, are law-abiding members of their communities who do not engage in or encourage illegal activities. We ask the committee to keep this in mind as you deliberate possible changes to the legislation.

We have not had the opportunity to canvass our members on their views regarding allowing licensed establishments, such as bars and restaurants, to remain open past 1 am. We bring this to your attention only to point out that some of our members have expressed frustration with the most restrictive closing time in Canada and a belief that much of the after-hours-club problem with illegal activities can be curbed simply by extending closing time for legally licensed establishments and ensuring that law enforcement agencies are provided with adequate resources and support to do their jobs.

This legislation provides an opportunity to address licensing policies and other important questions. I trust the government will seriously address the issues we and other business groups raise and refocus the bill to address the pressing problems of our community.

**Hon Mr Philip:** With your comments about possibly allowing some of the existing businesses to stay open later, are you aware that Mel Lastman had that position, consulted with the restaurant owners in his area and changed his mind because he felt that it would not be of help to his community? In fact, all the mayors that I have met with have expressed their concern that the bill not do that.

I want to point out just a couple of things to you. Since you are a province-wide organization, you have a number of members in Windsor. You're aware that the Windsor legislation goes considerably farther than this goes?

**Mr Couto:** Yes.

**Hon Mr Philip:** Are you also aware that there hasn't been one complaint from one business in Windsor as a result of the Windsor legislation? Yet you're saying that this bill goes too far.

**Mr Couto:** All I'm saying is that the real focus of the legislation should be on illegal activities, not simply

regulating businesses as a means to that. That's an important part of it, but—

**Hon Mr Philip:** That is the focus of the bill, sir. I suggest that you might like to read the bill again. Would you also like to—

**Mr David Johnson:** Give him an opportunity to respond.

**The Chair:** I would suggest that we don't badger the witness.

**Hon Mr Philip:** I'm sorry.

**Mr Mills:** He's stating facts. That's not badgering. Come on.

**Hon Mr Philip:** I'd just like to hear a constructive proposal from the witness.

**The Chair:** Certainly if there are questions raised by the minister, then Mr Couto should be given time—

**Hon Mr Philip:** One last question to you, and I just point out to you page—well, you don't have your pages numbered—but the second to the last page, on which you say:

"We believe that somewhere between the time that the concept of the bill was developed and the actual drafting of the legislation, the focus shifted from addressing the issue of stopping criminal activity in business establishments to focusing on the establishments themselves, whether or not criminal activity is actually occurring."

That simply, sir, is absolutely, positively wrong. The bill does not do that and I suggest that you read the bill again.

**Mr Couto:** Can I say something?

**The Chair:** Mr Couto, would you like to respond?

**Mr Couto:** First of all, I would suggest to the minister that I can only tell you what my members have told me, and if you think that you have a better ear to the ground than an organization of 65,000 members, all power to you. All I'm trying to point out to you here, sir, with all due respect, is that there is a concern in the business community that perhaps as the bill is going forward, as municipalities receive the new powers and all the changes are made, there is a perception that the real focus will be to further regulate business establishments.

Now that may in fact be wrong. It may be something that's not clearly been communicated. All I'm pointing out to you, sir, is that as a minister of the crown you should be aware that these perceptions are out there and that the committee then has an opportunity to carefully look at the legislation to ensure that businesses will be very comfortable with the bill. That's all I'm asking you.

**Hon Mr Philip:** Well, perhaps you can help us communicate with your members.

**Mr Noel Duignan (Halton North):** Point of order, Mr Chairman: The regular members of this committee want some opportunity to ask a question too, so I think we should be allowed that opportunity.

**The Chair:** Minister, if you'd like to respond and then we'll go to Mr Duignan.

**Hon Mr Philip:** I hope that you will help us to inform your members that in fact this focuses on individ-



ual businesses. It does not deal with general licensing, and in fact it's the offenders that this focuses on. I would appreciate if you could help us in communicating that to your members to relieve any anxieties that any of them may have, and I greatly appreciate your assistance in this matter.

**Mr Couto:** We're always at the disposal of the government.

**Mr Duignan:** Very briefly, I want to address some of the issues you raised in your brief regarding the special occasion permits. I don't know whether you're aware or not of the fact that the system will be automated fully by the end of February of next year and, because we've accelerated that process, we're now getting the system up so that will be in place by the end of February.

**Mr Couto:** I was not aware of that. Thank you.

**Mr Duignan:** Also the fact that the SOPs now—regulation has been passed along to municipalities to deal with that issue and also the implementing of the holding periods, as exist already in the legislation. The problem we have with the background check you raised is that it's tough to do when you've got 87,000 SOPs to deal with, when particularly 80% of them are for wedding receptions. So you can see the enormous problem there would be to dealing with that particular issue.

**Mr Couto:** I appreciate that, and all we would encourage the committee to consider is any way that you can enhance the background checking and cut down on the potential problems of SOPs. I think that would solve a lot of the problems.

**Mr Duignan:** That will be operative by the end of February, so that should solve—

**Mr Couto:** Perfect.

**Mr Bernard Grandmaître (Ottawa East):** We've listened to three presentations this morning—you're the third one, by the way—and all three are concerned with the "honesty and integrity" in sections 1 and 2 of the bill. Could you elaborate some of your concerns?

**Mr Couto:** Sure. The problem, I guess, that we've had in reviewing that section is that—and the previous speaker, in the questioning, sort of touched on it—as clear as that can be, would it be better to have "community standards" instead of "honesty and integrity"? We're not exactly quite sure how that would apply.

What we would like to see done, quite frankly, is, in the process of issuing licences, the system itself has to be, I think, much more in tune with the fact that we need to stop potential problems from occurring. That's why we say the system needs to be upgraded so that we will have the ability to have the LCBO or whomever issues licences catch potential problems before they occur and that the police are aware of potential problems that could occur.

In terms of "honesty and integrity," it's all rather vague. I think we'll look forward to a little bit more explanation as the committee hearings go on and then perhaps we'll feel a little bit better about it. Right now, we don't have enough information to really be all that comfortable.

**Mr Grandmaître:** Are you recommending to this

committee that the words "honesty and integrity" be removed from the bill? Is that your real intention?

**Mr Couto:** I would recommend that, except I don't have a suggestion for what to replace it with, quite frankly. We haven't got, at the chamber, to the state where we could have done that, short notice being what it is. I would just advise the committee to seriously consider at least carefully defining what that means so that the net doesn't become so large that it gets people whom it's not meant to get.

**Mr Grandmaître:** A better definition.

**Mr Couto:** Yes, at least. At least clarify what is meant. I think that's just a matter of either amending it or—yes, amending it would probably do.

1100

**Mr David Johnson:** On behalf of the committee, I would like to apologize for the treatment you've received here this morning. You've brought a very legitimate case, one that I have a great deal of sympathy for, to this committee on behalf of the business community of Ontario. Indeed, I think if we thought seriously about this—

**Mr Mills:** A point of order, Mr Chair.

**Mr David Johnson:** I'm in the middle of making—

**Mr Mills:** That comment about apologizing for the behaviour of the committee I think is out of order. The minister was stating facts. He wasn't badgering the witness. That should be on the record.

**The Chair:** That's not a point of order.

**Mr David Johnson:** That's just wasting my time.

**The Chair:** Mr Johnson is entitled to make his comments.

**Mr David Johnson:** I think if we'd thought about this deeply, then we would share your point of view that it's the criminal activity that we should be focusing on and we should be well aware of the administrative burden on businesses. Indeed, you've indicated that some businesses may not be even aware that the illegal activities are taking place within their premises and could be impacted by this.

It seems that perhaps the focus—well, we've discussed the "honesty and integrity" situation, and it's really not definable. How honest do you have to be before you—

**Mr Couto:** How honest is honest, yes.

**Mr David Johnson:** How honest is honest? How much integrity is integrity? I don't know. Maybe it should be prior convictions or something of that nature. Is that what you're thinking, perhaps?

**Mr Couto:** Something that can be measured, I suppose, is a word I would do. The problem with good intentions—and "honesty" and "integrity" are, I think, good-intended phrases—is that they tend to be not as clearly defined as perhaps we would like. I think there's an opportunity, quite frankly, for the committee to propose, and we would like to propose it, if we may, after our hearing and after we've had a little bit more chance to look at the legislation, just how we can improve that, because I think the idea is right, and perhaps even the words are right, but there just need to



be assurances that it's not going to be applied in a manner that it's not intended to be, that's all.

**Mr David Johnson:** You've mentioned the special occasion permits as well, and I think there's been some discussion on that. Are there any other particular areas in the bill that you would like to raise the red flag about in terms of the business community?

**Mr Couto:** I think we really have touched on at least some of the really broad issues. I would like to come back to the issue of extending closing hours, which the minister mentioned. Again I emphasize that we haven't had a chance to really find out what our members think about it, but I think that's something that perhaps the committee needs to really look at. I know you may not want to handle that question here, but it needs to be discussed, there needs to be a debate on it.

There are a lot of businesses that really feel that would be a step forward in combatting a lot of the problems we have now. Of course, there are communities that take the opposite view, that no, that's encouraging the problem even more. We're not certain, but I think that really needs to be thought over very carefully by members of the committee. I would encourage the minister, in particular, and his staff to really, really think about how that fits into all of this.

**Mr David Johnson:** There needs to be some thought on that. I guess, just finally, I echo your comments with regard to community standards as well, getting back to that issue, I suppose. In my comments to the previous deputation I know that people within a community find many different aspects a problem. Noise, for example, is something that was raised this morning.

**Mr Couto:** Nuisance problems.

**Mr David Johnson:** But noise is in the ear of the beholder, I suppose. I remember being called out after midnight one morning to listen to a business in East York that supposedly was creating noise problems and, my goodness, you had to strain to hear it but, sure enough, it was there. It was probably about 20 decibels, which is way below, but this little noise was bothering a person at that time of night, I guess, when they were trying to sleep.

**The Chair:** Mr Johnson, I'd just like to encourage you to get on with your question.

**Mr David Johnson:** Okay. Just in wrapping up then, people will use these kinds of standards in a broad base to affect many different businesses, so I'd be very reluctant to put in "community standards," because it could tackle any kind of business and be more red tape and hindrance to the business community.

**The Chair:** Thank you very much, Mr Couto, for making your presentation before the committee.

JOE MIHEVC

**The Chair:** The next presentation this morning is by Joe Mihevc, councillor, city of York.

**Mr Joe Mihevc:** Thank you for allowing me to make this deputation on the proposed legislation affecting late-night businesses and after-hours clubs. First of all, I want to applaud the government's initiative, an initiative that I think will help local communities like the city of York

basically to get back our community. I hope and trust that all members of the provincial Parliament will move quickly to see a speedy passage of this bill.

Unfortunately, I don't have a copy of the precise changes in legislation, as things have evolved quite rapidly—I only have a copy of the press release of November 24—so I'm not quite competent in terms of speaking to the details of the new legislation. Now I have it, okay. Nevertheless, I feel that it is important to speak to the committee on the issue because of the experiences we have had in the city of York related to booze cans, after-hours establishments, crack houses and so on. Over the last three years we've developed quite a strategy in our community to combat these illegal activities.

Let me tell you of some of the problems that we have had in the city of York and how the province can be of assistance to a local municipality like ours.

As some of you are no doubt aware, in Toronto the Vaughan-Oakwood corridor has gained some notoriety in the past three to four years because of the level of illegal activity that has been going on. A relatively peaceful community had, within a very short time, been hit with quite a number of illegal activities from crack houses to drug dealing in homes and businesses, booze cans and prostitution on Oakwood Avenue and Vaughan Road. Three years ago, when the then new council of the day sat down with a number of stakeholders, we listed the number of such premises, and they listed in the area of about 40; we had about 40 such establishments. Needless to say, our normally peaceful community was in an uproar.

Our strategy to fight against them was quite simple and, as I look back, quite effective. It could have been more effective if some of the changes that are being proposed were in place then, and that's my key point today. The essence of our campaign to clean up Oakwood Avenue was what I would call a multisector approach: We involved concerned community members who were beginning to organize in a group and at the city level we organized a crime committee that brought together basically anyone at the city level, the Metro level or provincial body who could help.

Sometimes, but not always, police action is the answer, there's no doubt about that, but at other times it is better to use other tools that are available, such as health inspectors, bylaw people or the liquor licensing board. Sometimes we even went after the owner of a particular premise who was an absentee owner who had very little concern for the community around the property he or she rented out. Sometimes we even went to the mortgage company to see what levers it could use to pressure owners around mortgage renewal time. This strategy, which took an awful lot of work, was very effective, and I think in the last three years we've basically eliminated about 80% of the problem properties.

The key, however, is that it took an awful lot of work. Who would have thought that the politicians and the city departments would be so involved and have to jump through so many hoops to curb this illegal activity? It took a lot of work of politicians, police and city departments. This time is too long, especially as very often the



persons involved in the illegal activity quickly pick up and move to their next location. The point here is that we need more tools, tools that we can use quickly to nip these problems in the bud before they get out of control, as happened on Oakwood Avenue. I believe it is inappropriate for local municipalities to have to spend so much time and resources on controlling illegal activity.

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I'll give you an example. We had a property on Arlington that was having regular house parties. Advertisements and posters publicizing the event went up weeks in advance. Hundreds of people descended on to the residential community regularly and had parties almost till dawn. Cars were everywhere, partygoers were urinating on neighbours' lawns etc. The police had very little power, except to charge them with noise bylaw violations and maybe a liquor offence.

On one occasion, I drove around with the police for a few hours while one of these house parties was going on. The only charges that got laid were a few parking tickets and a noise bylaw violation. By the time this charge went to court, the residents had moved and, in the meantime, the neighbourhood had been absolutely terrorized.

In this case and in many others, it is appropriate for police to have greater powers to seize the speakers and the alcohol as soon as there is clear evidence that a house party is about to happen. As I said, I haven't reviewed the details of the legislation, but I trust that the legislation gives police the authority to do so.

Another area of concern is establishments that run throughout the night; for example, doughnut shops. York has been powerless to stop some doughnut shops where there has been drug dealing going on in or around the premises because, as legislation provides, what's demanded is equal treatment for all business establishments that are of a like nature. As I understand the proposed legislation, the new law will allow for some discretion by municipalities to treat one location different from another where there are just grounds. I support this change because it means that in sensitive areas like Oakwood and Vaughan, or Jane and Woolner in the west end, for example, where there is a history of illegal activity in certain pockets or nodes, we can make the case that certain premises should be closed for certain hours, especially in the late evening.

One area of concern that I'm not sure the legislation touches upon, and I'd appreciate being filled in on this, is whether we will have some legal recourse against the owners of residences that have house parties or the owners of commercial facilities whose tenants or leaseholders regularly break the terms of the special occasion permits. Landlords ought to share the responsibility for what is permitted on the properties that they own. Similarly, we need tools to deal with owners of banquet facilities, for example, that rent out on a regular basis their halls to groups that party virtually all night.

That's all I have to say and I thank you for this opportunity to address the committee.

**Mr Carman McClelland (Brampton North):** A couple of quick questions, and perhaps we won't use up

all the time and can roll over to my colleague to my left. You mention on the second page, in the second complete paragraph, that you would hope that there would be authority for police perhaps to seize property.

What would you suggest in terms of a situation that may obtain where property is seized inappropriately, that there is in point of fact an error made, that police exercised discretion perhaps a little bit overzealously? I know they would not do that intentionally, but mistakes do happen. Would you suggest that perhaps there should be some safeguard or some indemnity put in place for that type of potential inadvertent error?

**Mr Mihevc:** Sure. There would need to be safeguards put in place, and I would say that the police should have that authority to go in and seize property once a clear case has been established that this is a house where there has been an ongoing presence of house parties.

Everyone has at times a larger house party. We're not looking at those kinds of situations. We're looking at situations where there are literally hundreds, sometimes, of people descending upon a house. Maybe the first time you have no cause for it, but certainly by the second house party, where there are advertisements distributed, where there's admission charged—

**Mr McClelland:** So in point of fact, you're talking about perhaps a habitual situation as opposed—

**Mr Mihevc:** A habitual situation, that's right.

**Mr McClelland:** Okay. That might be of some help.

Secondly, two points. I'm going to try to wrap them up in the interests of time. You talk, in the next paragraph, about where there's activity around the premises. I'd be interested in knowing how you feel the proprietor or the lessee should be responsible for what happens in and around the area that's adjacent to his or her property. It seems to me that is not their responsibility, ultimately. I'm not sure how you could bring a sanction against the individual who is, in point of fact, perhaps a victim themselves.

Secondly, landlords for what is permitted activity—how about a landlord for what turns out to be unpermitted activity, that somebody is engaging in conduct contrary to the express interests and express provision of the landlord, yet the person who is leasing the property proceeds notwithstanding a specific and direct admonition of the landlord not to do what in point of fact they're doing? Where would you see the, I suppose, justice ultimately of the landlord being held accountable for something that he or she not only did not endorse but, in point of fact, did everything in their legitimate and legal power to prohibit from happening? Would it not be reasonable that the perpetrator of the illegal activity bear the burden, not the person who, again, would be a victim?

**Mr Mihevc:** Yes, certainly the person who is promoting the activity, the illegal activity, is the prime focus. However, the landlord has a role to play in making sure that the premises they rented out are safe and doing either an honest business or having bona fide residents, if it's a residence.

I think provisions can be made for landlords. Even if



they are not the perpetrators, they do have a responsibility, it seems to me, and I'm not sure if the legislation provides for this, to take some responsibility. If there's no correspondence, if there have been no warnings, if the landlord has basically collected the rent and buzzed off and you don't see them, and there's absolutely no evidence of them doing anything with regard to illegal activities going on in the business or residence that they own, I think they have some accountability. There are ways to put borders around that accountability, but I do think that they should share in the accountability.

**Mr McClelland:** I'd be very interested in those borders because I guess, in closing, I'd ask you a question: Have you ever met a landlord who has had a bad tenant?

**Mr Mihevc:** Oh, yes.

**Mr McClelland:** Okay, thanks. I guess that makes my point, sir, and I—

**Mr Mihevc:** Our experience in the city of York has been twofold in that. We have had landlords who, once we have pointed out an illegal activity going on on their property, have moved quickly, have worked with us and have assisted us, and we've assisted them, in evicting the tenant.

**Mr McClelland:** Absolutely. It seems to me too that you've probably met proprietors and operators of legitimate and in fact very positive enterprises in the community who are again victims—

**Mr Mihevc:** Victims, that's right.

**Mr McClelland:** —of disreputable conduct, through no fault of their own, of patrons of their establishment.

**Mr Mihevc:** That's right.

**Mr McClelland:** Therein lies, I think, a very, very great concern.

**Mr Mihevc:** That's right. With respect to the former one—

**Mr McClelland:** I appreciate where you're coming from. I just think it's a very, very sensitive and delicate balance and I think that we have to proceed with abundant caution in respect of the legitimate business concerns that are, more often than not, it seems to me, the victim and only, in the very, very rare exception, are part and parcel of the problem.

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**Mr David Johnson:** I congratulate you for your efforts. Obviously you've been involved with just about every kind of situation and under very trying conditions. It certainly appears that you've been most successful in representing your community and coming to grips with this problem.

I just wondered, when you were out with the police, you mentioned that there was a house party or house parties that were being observed and there were very few charges that were laid. According to the Liquor Licence Act—and I may be misinterpreting it, but this is the existing Liquor Licence Act—there's a clause on page 389—do you believe it?—that says, "No person shall be in an intoxicated condition...in a place to which the general public is invited or permitted access." From the

way you've described this, posters were placed around the community inviting the general public, in a sense, to come. Did you hear any talk from the police? It sounds to me as if that existing provision would allow the police to lay a charge and I wonder if that ever came up.

**Mr Mihevc:** As I understand it, they could have, at the height of the party, gone in, especially with the noise bylaw, and closed the place down just on the virtue of the noise bylaw. But as the police of the night were telling me, and they had five cars patrolling in this one area, "Who in their right mind is going to allow their police to go in, 10 police against, you know, 100 partiers, half of whom are intoxicated?" So at certain points in the evening, even if they do have the authority, they will not exercise that authority for obvious safety and security reasons.

I think the way to get at house parties is earlier on in the evening—and this is for habitual places, where there is evidence that this is an ongoing activity, and the flyers are usually quite prominent in the community—that they are able to come in, not at 1 o'clock. By 1 o'clock the most they can do is move cars on and basically watch, but if they could get in at 7 pm or 8 pm, when the speakers are coming in and the booze is being brought in, and confiscate the booze and take the speakers, that would nip it right in the bud. As I understand it, these new provisions allow for that to occur.

**Mr David Johnson:** I just wanted to get back for a minute or so—

**The Chair:** Sorry, you only have one minute.

**Mr David Johnson:** Okay, good, for a minute exactly, then—to the businesses. You've made reference to a doughnut shop. From your experience, what sort of businesses are most susceptible, let's say, to the drug trade? Is it primarily the food trades, or what—

**Mr Mihevc:** I would say it's the doughnut shops. There's usually a phone around a doughnut shop, and because doughnut shops are often open all night, they present problems. And many doughnut shops might not even be directly involved.

**Mr David Johnson:** Sure. Well, that's the point.

**Mr Mihevc:** Yes. However, the doughnut store owners will tell you themselves that—they might argue that they need to stay open all night. They say two things: "We need to stay open all night for business reasons. At the same time, we don't like what's going on in our neighbourhood."

**Mr David Johnson:** In my final 30 seconds, is there anything that they should be doing now, from your experience, that if they had done this, other than close down, obviously, but is there anything else they should be doing to discourage the drug dealers?

**Mr Mihevc:** That doughnut stores should be doing?

**Mr David Johnson:** Yes.

**Mr Mihevc:** Well, regular reporting to the police is what we encourage them to do, and also to get involved, send an employee or that the owner go to community meetings where problems are discussed, where information is shared, that kind of thing. If they're more involved and integrated with the positive side of the community,



I think that's a helpful step. That's certainly what we're doing in the Vaughan-Oakwood area. For all new businesses, we invite them to a community meeting and we kind of read them the riot act but we also invite them to participate with us in keeping the neighbourhood clean, for their interest as much as the community's interest.

**Mr Duignan:** You raise many issues, and I don't think we have enough time to cover them in the three minutes, but maybe I'll have a chat with you after we're finished here.

I'll pick up on a point Mr Johnson raised in the question on house parties. Part of the problem with the police getting access is they had to get a search warrant under the Provincial Offences Act, because largely the house parties were held in private premises. That was part of the problem. With Bill 198, police will be able to obtain a search warrant under the liquor licensing act to enter those premises and indeed will be able to order people to vacate and will be able to seize alcohol on direct and indirect proceeds as well. So there are additional powers there to deal with that particular issue. It will give police greater access and power to order people to vacate.

Also, the question about doughnut shops: Under Bill 198, municipalities will be able to base licensing decisions on the honesty and integrity of that operator or establishment. If an operator welcomes or indeed is involved in illegal activity, licensing actions can be taken by the municipalities. Also, under that, the licence, or conditions, such as limitation in operating hours, can be imposed upon individual problem licensees as well. So it will give the municipalities additional powers there, and doughnut stores will be subject to the increased fines which are applicable under the municipal bylaw infractions, which hopefully will encourage the doughnut store owners, the legitimate ones, to inform the police and complain to the police: "There are illegal activities taking place in my premises. Do something about."

**Mr Mihevc:** Would that include around their premises?

**Mr Duignan:** Yes. Municipalities will be able to take enhanced licensing action against individual problems. You could put conditions on the licence.

**Mr Mihevc:** This is great.

**Mr Duignan:** Business operators, again, I said, will be encouraged to take action if illegal activities exist.

On the question of booze cans, again, under Bill 198, police will be able to obtain a search warrant under the liquor licensing act to enter any premises, order people to vacate, arrest without warrant for identification purposes and seize alcohol, and direct and indirect proceeds as well, so that gives additional powers there. Municipalities can ask the courts for a closing order on the location if a booze can has been operating without a municipal licence etc, so that can happen there. Booze cans will be subject to the increased fines which are applicable to municipal bylaw infractions. So there's a whole range of powers there as well.

And as I said earlier, under the SOPs, for example, we have a new tracking system that will be fully operational

by the end of February 1995. We're giving the municipalities the power to issue a SOP licence in the municipalities in which the event is taking place, and also a holding period as well, which already exists in the legislation. So indeed there are a number of things happening that will increase very effective policing powers as well as municipality powers to deal with some of the problems you have raised in your brief here today.

**Mr Mihevc:** Yes, and we are extremely thankful. I think if these things had been in place earlier, then we would have been able to clean up Oakwood and Vaughan much more quickly than the time that it took. So we're grateful for this.

**The Chair:** Thank you, Mr Mihevc, for coming before the committee this morning.

#### ONTARIO RESTAURANT ASSOCIATION

**The Chair:** The next presentation is by the Ontario Restaurant Association, Paul Oliver, president, and Rachelle Wood, manager of government affairs.

**Mr Paul Oliver:** Good morning. On behalf of the Ontario Restaurant Association, we are pleased to have an opportunity to present our views and those of the restaurant and food services industry on Bill 198. I'm Paul Oliver, president of the ORA, and with me is Rachelle Wood.

The ORA recognizes and sympathizes with the goals and objectives of Bill 198. We agree with the government's view that the illegal sale of alcohol after 1 am, the sale of drugs and violence that sometimes goes with these illegal activities is disruptive to the community and in some cases very detrimental. Our concerns with this legislation do not focus on its goal but on the means by which it is attained.

The ORA commends the government of Ontario for taking steps to deal with the issue of illegal activities occurring in business establishments and giving police greater powers to deal with special occasion functions. The ORA, however, has several concerns with the way in which the government has chosen to deal with this issue under Bill 198. Specifically, we are concerned with the implementation of the proposed legislation and the requirements and possible effects it will have on legitimate, law-abiding small business operators. It is also important to note that many of the initiatives surrounding enhanced enforcement of liquor legislation do not require legislative changes and in fact could have already been put into place a long time ago.

While Bill 198 is intended to address the issue of illegal after-hours clubs and legal clubs in which illegal activities are occurring, it instead has its focus on legally run, licensed establishments and will have far broader ramifications. We fear that this legislation will in fact hurt the good guys and continue to ignore the bad guys, those not seeking licences.

#### 1130

The continuing problem of illegal after-hours clubs is one of enforcement, mainly due to the fact that existing legislation is not properly nor adequately enforced. We must keep in mind that we are talking about an illegal activity. Regardless of how much one tries to regulate an



illegal activity, it remains just that: illegal. Only after enhanced enforcement of existing laws and a better explanation and understanding of the causes of after-hours clubs will we be able to get to the root of this problem. More regulation by itself will not be an effective solution.

The questions this committee should be contemplating are: Will this legislation solve the serious problems we are facing, and is there a more effective way to address these problems?

I just want to add one point. The previous speaker raised a number of issues around house parties and the growing problems that they are disruptive in residential areas. I would note that because house parties do not seek municipal legislation or liquor control board or liquor licence board licensing, they are not covered by this legislation. In fact what we may be doing from this legislation is shifting after-hours clubs from industrial or commercial areas into residential areas. The enforcement contained around a house party is going to be very difficult, and what we may do is actually disrupt communities even more under this.

But I'll ask Rachelle to comment on our specific concerns in this legislation.

**Mrs Rachelle Wood:** Our first series of concerns are in regard to part IV with respect to the Liquor Licence Act and special occasion permits. As stated, the ORA supports initiatives which impose further restrictions on SOPs. However, we believe that Bill 198 does not go far enough in dealing with the severe problems associated with SOPs. We believe that many of the current problems occurring at SOP events occur because LLBO criteria for applicants are too relaxed or administrative criteria are not maintained. Many of the illegal after-hours clubs are operated under SOPs. The ORA believes that the current problems surrounding the issuance of SOPs are therefore a human resources issue.

The ORA understands that there are currently guidelines which suggest recommended waiting periods for the various types of SOPs. However, we believe that these guidelines are not being properly followed nor enforced. Therefore, the ORA believes that Bill 198 should include specific clauses regarding the issuance and enforcement of SOPs.

With respect to the hours of operation for legitimate operators, the ORA has recommended that one of the options to reduce the proliferation of illegal after-hours clubs is to allow licensed and controlled restaurants and bars to remain open later. As previously stated, Ontario is the only province in Canada which is closing hours and is the province with the greatest problem with illegal after-hour clubs. Therefore, the ORA continues to call upon the government of Ontario to adopt extended hours for a province-wide six-month term and to evaluate the impact and consumer response after that six-month period.

On pages 3 and 4 of our submission we have various recommendations with respect to SOPs, and I won't go through all of them as they're there and we will be able to answer questions with regard to them.

Our next set of concerns relates specifically to part I of Bill 198 under the Municipal Act. Our primary concern revolves around proposed changes to the act. The proposed changes fundamentally could impact many legitimate and law-abiding small business operators and substantially increase the red tape confronting business.

The ORA wishes to ensure that the real issue, that is, criminal activity occurring in businesses, is dealt with. However, we believe that Bill 198 is seriously flawed in that its focus is on the establishment where an illegal activity is occurring, regardless of whether or not the proprietor is involved in the activities. Bill 198 will not necessarily punish the person who is committing an illegal activity; rather, it will punish the establishment as a whole by revoking, suspending or imposing conditions on the business licence.

This will impose a severe burden on small business operators who under Bill 198 will be punished by the actions of their customers. We believe that in the majority of cases, business owners cannot be aware of the activities of their customers, do not participate in these activities and, most of all, cannot restrict the activities of their customers.

Bill 198 states that a business operator who is believed not to be operating with "honesty and integrity" will have a hearing before a council or police services board before any decisions are made regarding their business licence. The burden that this will place on all businesses, and especially small business operators, will be significant and costly.

In addition, the degree to which Bill 198 will be applied across Ontario will largely vary. The ORA has always advocated and supported a fair playing field for its members throughout Ontario. We also believe that Bill 198 results in serious discrepancies between competing operators, as municipalities will impose Bill 198 to varying degrees. This conceivability will create an unlevel playing field with competing operators required to abide by varying operating rules.

As stated, we believe the continuing problem of illegal after-hours clubs is one of enforcement, mainly due to the fact that existing legislation is not being properly nor adequately enforced. By allowing municipalities broad powers to issue, suspend, revoke or impose conditions on a business licence, regardless of whether the business sells alcohol or not, at the discretion of the municipality, small business operators will be placed at a serious disadvantage and will face massive increases in bureaucratic red tape. Powers under Bill 198 will only serve to create a patchwork of legislation in Metro and across the province, as different municipalities will enforce the legislation to varying degrees.

I would just like to touch upon two of our recommendations, the first one on page 6, that Bill 198, part I, clause 109.1(2)(d) be amended to remove the words "at the time it is granted or..."

The ORA believes that if a business licence requires conditions placed on it from the outset because the licence issuer has doubts that the individual requesting the business licence may not operate the licence within the confines of the law or with "honesty and integrity,"



then the business licence should not be granted at all.

In addition, we believe that section 109.1 should be amended to include a clause which would require that, "Where a licensee is not knowingly aware of the illegal activities of his employees, clients or customers, the licensee will not be held responsible or liable for any act or acts undertaken by such employees, clients or customers."

The ORA believes that Bill 198 must include specific safeguards to ensure that business licence holders are not charged for the activities of their employees, clients or customers. Thus, Bill 198 must include a clause which removes responsibility or liability from a business owner who unknowingly has employees, clients or customers involved in illegal activities.

In conclusion, we strongly urge the members of this committee to think of the long-term ramifications of the new powers which will be granted to municipalities under Bill 198 and the potential negative impacts and burdens it will impose on legitimate business operators.

We will state once again that we are willing to work with the Ministry of Municipal Affairs, the Ministry of the Solicitor General and Correctional Services and the Ministry of Consumer and Commercial Relations regarding the issues we have raised in our submission.

**Mr David Johnson:** Thank you very much for your presentation. You've raised a number of red flags about this legislation. Looking at the "honesty and integrity" clause, you've raised some serious concerns about that, and we've had some question as to how it could be defined as well. I think you're saying the same thing, that there may not be a level playing field and indeed it may be applied different ways in different municipalities, and that could certainly cause a problem. I wonder if you'd expand a little more on any other problems you see with regard to the honesty and integrity clause.

**Mr Oliver:** Certainly we have a lot of concerns about the interpretation of honesty and integrity. Certainly in one municipality honesty and integrity may be interpreted very differently than in another, or depending on whoever's overseeing the hearing.

But in particular we're concerned whether the individual has to be convicted of a criminal act before their honesty and integrity is questioned or whether something as simple as not paying their taxes on time would put in question their honesty and integrity.

We've already seen this interpretation used by the province of Ontario in the Liquor Licence Act, where they use clause 6(2)(d), using the words "integrity and honesty." They have attached special conditions for establishments that are late or slow in paying their provincial sales tax. Subsequent to that, the province has amended that legislation, but that's been in use now for at least a year and a half. We don't have any guarantees that Metro Toronto won't say, "If you haven't paid your property taxes on time, your integrity has been infringed; therefore, we are putting a special condition on that."

What we've done is just opened up the Pandora's box without the controls in place. If it was to say that if you're dealing crack in your establishment—shut them

down. But we have a lot of situations, and ones that have even come up today, where a previous speaker was talking about that they know an area, a geographical area, that has criminal activity known in the area, or it might be adjacent to or near the establishment, and that the conditions should be put into place on those. The honesty and integrity of that operator has not been infringed, the honesty and integrity of that establishment has not been infringed, but they're already interpreting it as the right to start putting conditions on it.

I think it's important that this committee put some restrictions on "honesty and integrity" before we move this forward. It will give business a good idea as to where the level playing field is, but in particular it will help municipal officials determine what their responsibilities are, as well as the scope of their power.

1140

**Mr David Johnson:** Okay. I appreciate your comments. You made a number of specific recommendations. It will take a while to go through this, and I guess we've only got today to deal with it. Would it be your suggestion that the "honesty and integrity" clause just be taken out, or would it be your suggestion that it be changed to, for example, if there's a conviction registered? How would you deal with this?

**Mr Oliver:** I would suggest there has to be a better way and a cleaner terminology that we could come up with, and I know there's a certain urgency to rush this legislation forward. My recommendation is that if we need to slow it down and take an extra day or an extra two days to do it, then let's do that, because we don't want to create a nightmare out there for small business, a nightmare for municipal officials.

I know that this legislation was drafted very quickly, in about 23 days. That's an unprecedented speed. But when you're doing things rapidly and quickly, you make mistakes. I think we have terminology here that is not going to be effectively implemented, and either we're going to be back here in a year or six months with municipalities asking for clarification or we're going to have a whole bunch of municipalities exposed to legal challenges from operators.

If you come in and ask for a licence, or have a licence and I put a restriction on you, and then you prove there was no honesty and integrity infringed, the municipality potentially could be sued. Because we haven't put the terminologies in here, we're exposing municipalities also to a huge potential liability.

**Hon Mr Philip:** Are you aware, sir, that the Liquor Licence Act and the Mortgage Brokers Act use "honesty and integrity" as one of their criteria and in fact that there's a long case history of judicial decisions based on this? Therefore, it isn't something new that is being suddenly dropped into this act.

I'm wondering, since we have Beverly Wise, the legal counsel for the Ministry of Consumer and Commercial Relations, if she could respond to your question and that of Mr Johnson on the definition of "honesty and integrity."

**Mr Oliver:** If I could respond to your question, yes,



I'm aware of it, particularly in the Liquor Licence Act. I'm quite aware of that. But that's where our concern arrives from, that the liquor licence board has used tax payment as a question of honesty and integrity. We don't think that's what initially was put in there, but what we're doing is we're opening that Pandora's box up at the municipal level. We would disagree with the way the province has interpreted it in Ontario, but a lot of small business operators don't have the financial resources to fight Queen's Park, and what we're going to do is now have them fighting city hall as well.

**Hon Mr Philip:** I'm going to ask Beverly, but under the Liquor Licence Act what you're dealing with is a question of fraud. I think that's different from what we're dealing with here.

**Mr Oliver:** No, I would disagree. They have to have a clearance from the Ministry of Finance that all of their PST is paid up to date. That's not a question of fraud, it's not a question of audits; it's that everyone has to have this clearance beforehand to pass the honesty and integrity issue. If it was a question of fraud, that would be honesty and integrity. It's not. This is an application that's applied to everyone, all 14,500 licensees in Ontario.

**Hon Mr Philip:** I'll ask the ministry staff from the other ministry.

**Ms Beverly Wise:** My name is Beverly Wise and I'm legal counsel with the Ministry of Consumer and Commercial Relations.

The principle of honesty and integrity is a concept which is reflected in many of the Ministry of Consumer and Commercial Relations' regulatory statutes, including, to just name a few, the Real Estate and Business Brokers Act, the Motor Vehicle Dealers Act and the Gaming Control Act.

The concept in the Liquor Licence Act, like the other statutes, is linked to the past conduct of the applicant. In liquor, it's the past and the present conduct of the applicant in relation to the ability to carry on business or their trade in accordance with law and with integrity and honesty.

The liquor board, just as in the other regulatory statutes administered by my ministry, looks at many factors in assessing an applicant's honesty and integrity, and those factors have to be relevant and provable. Those factors can include the truthful completion of the application form, conduct in relation to other licensing requirements and criminal or other offence record. The evidence that you're referring to, I would presume, would be relevant evidence that would be put before the board in making an assessment as to honesty and integrity.

In relation to the other MCCR statutes, there is an administrative tribunal that has addressed the issue of honesty and integrity over quite a long period of time. It's the Commercial Registration Appeal Tribunal, which has developed jurisprudence dealing with the concept. That's just a broad history, if I can say, of inserting the concept here.

**Mr Oliver:** So from what you're saying, if I'm understanding it, and correct me if I'm wrong, is you're

suggesting that the liquor licence board has the ability to use taxes as a question of honesty and integrity.

**Ms Wise:** As the whole picture. They don't take an isolated factor; they'll take the whole picture.

**Mr Oliver:** Yes. I guess then the question would become, why would a municipality not be able to use property tax payment, if you're late by three months in making your payment, that your honesty and integrity have been infringed; or if you haven't paid a parking ticket, that your honesty and integrity have been infringed? I would think that would be the same principle carried forward. That's our concern, that we can find reasons to shut businesses down, even though there may not have been a reason to start with.

**Hon Mr Philip:** Non-payment of your taxes is already used as a criterion for not renewing your licence, so there's nothing new in that.

**Mr Oliver:** Provincially or municipally?

**Hon Mr Philip:** Municipally.

**Mr Oliver:** To the best of my knowledge, it isn't.

**The Chair:** If you would identify yourself for Hansard, please.

**Mr Tom Melville:** My name is Tom Melville. I'm a solicitor for the Ministry of Municipal Affairs.

With respect to the non-payment of retail sales tax, I understand from information just given to me that that is a rationale for not renewing a licence but that it operates independently of the criteria of honesty and integrity and in fact was introduced as part of a recent bill, Bill 161, which deals with smuggling. So it's independent criteria.

**Mr Oliver:** If I could correct you on that, my understanding was that the sales tax provisions before 161 was passed were used based on the honesty and integrity provisions of this. It was because of concerns expressed by our industry, as one of the reasons, that it was amended. But for a year and a half it was used under these provisions.

What we have is, a municipality could say the payment of property taxes is a question of honesty and integrity, and unless the small business operator has \$100,000 or a couple of hundred thousand in the bank to challenge city hall, they are going to be put out of business. That's not solving the problem of crack dealers or drug dealers. It's an issue of hitting the good guys.

**Mr Melville:** One further response: I don't think we can get into an argument about the specific outcome in a particular case. As has already been answered, presumably any evidence related to honesty and integrity could be used in a licensing decision, but the tribunal, in the whole of the evidence and circumstances, would make the decision. We do have information that Bill 161 certainly effects the decision-making independently of the criteria of honesty and integrity.

**The Chair:** We're going to the Liberal caucus now.

**Mr Cordiano:** We are concerned in our caucus about this "honesty and integrity" section. It's a view we have that perhaps this needs to be further defined, and perhaps that can be accomplished through a prescription in regulations where it's made clearer what would be taken



into account. I think that would be something that would go towards alleviating some of the concerns you may have and others have expressed around this clause. Would you agree with that, if an effort were made to more clearly identify what is included in the clause?

**Mr Oliver:** Yes. Our first preference would be to have "honesty and integrity" defined clearer in the legislation; as an alternative, to set criteria through regulation in which a municipality can question the honesty and integrity. That would be a second thing. I recognize there are time considerations—

**Mr Cordiano:** That's what I'm concerned about.

**Mr Oliver:** —in getting this passed before Thursday. It could be something that could be addressed in regulation. I think it's important for the municipalities to know where they have the power and where they don't—

**Mr Cordiano:** Absolutely.

**Mr Oliver:** —just as much as for the business to know what the rules are.

1150

**Mr Cordiano:** We wholeheartedly agree and I think we would ask the minister to consider that in our clause-by-clause considerations this afternoon.

**Mr Murphy:** I want to follow up on the conversation you were having with the ministries' solicitors on the issue of honesty and integrity. I just want to understand the argument. If what you're saying is correct, until Bill 161 amended the provision, the "honesty and integrity" clause was used in the context of non-payment of certain fees as a reason not to renew a licence.

**Mr Oliver:** Yes, or to put a special condition on the licence.

**Mr Murphy:** So if that interpretation is right, then that bolsters your argument that the "honesty and integrity" clause can be used to bring in all sorts of other things to police, in essence, a business broadly, because in fact by amending the law to prevent that from happening, we recognize that as a legitimate interpretation of the honesty and integrity provision, as it stood, those kinds of things could be used. I'm wondering if you agree with that, and then I'd like to see what the ministry lawyers have to say about that.

**Mr Oliver:** Yes, we do. We would say that a municipality potentially could use the honesty and integrity to question property tax payment. But the problem becomes that if a municipality does that, the only person who is there to challenge it is a small business operator who may be running a doughnut shop or a pool hall. The problem becomes for them that they just don't have the resources to fight to get back to where they should have been, or their rights in the first place. Unless we address this now, we're going to have a lot of small business operators put at a disadvantage.

**The Chair:** Mr Murphy, I'm sorry, our time has expired and we must proceed. I want to thank the Ontario Restaurant Association for making its presentation before the committee this morning. I might remind any of the witnesses who have come forward that we are going through clause by clause this afternoon and there will be further debate with respect to this Bill 198. Some of the

issues that have been raised here I have no doubt will be considered as we discuss clause by clause.

#### OAKWOOD COMMUNITY GROUP

**The Chair:** The final presentation this morning is by the Oakwood group. We have Jim Stratton and Sandra Walker.

**Mr Jim Stratton:** Thank you for allowing us to appear. My name is Jim Stratton, and with me is Marlene Semple. We are members of the Oakwood-Vaughan community group. This is a group of volunteer citizens in the city of York that started about three years ago in order to try and improve our neighbourhood, and particularly to deal with matters relating to crime and with police activity.

In that regard, one of our major concerns has been and continues to be after-hours clubs. In our neighbourhood in the last three years, there have been six murders at after-hours clubs. Our neighbourhood is plagued with after-hours clubs. I have one where a murder occurred about 12 months ago, and the person has not been found, that operates four doors from my house. Many members of our group have been directly affected and continue to be affected. We're very concerned about the quality of life in our neighbourhood and we certainly welcome the government's initiative in this regard.

I would simply tell the members that in our view there are two distinct issues that have to be addressed. One is with respect to licensed establishments that do not honour their responsibilities as a licensee and operate after hours.

We have had direct experience in that regard. We got involved in our neighbourhood, right at the main corner, Oakwood and Vaughan, with a restaurant called the Deluxe Restaurant in a hearing before the liquor licensing board. There were days of testimony showing, as a result of undercover activity, that there were ongoing violations of the Liquor Licence Act, that drugs were being sold quite openly on the premises. Drugs were sold to the undercover agents. The violations were extensive. Many members of the community were talking about no longer going to that corner. The result of all that testimony was that the licence was lifted for a period of 30 days, and we really found that that was quite inadequate.

In addition to that, they filed suit against the chairman of our group for libel and slander in an attempt to keep us from proceeding in this matter.

The other kind of premise that you have to pay attention to is private house parties. In our neighbourhood private house parties are not what maybe you think of in your neighbourhood. They have become a completely and totally commercial venture. These are all invitations to private house parties in our neighbourhood. These are commercial ventures and they operate completely outside the law. Because they are private residences, we are told by the police that their ability to stop them, under the current legislation, is almost nil and they can't even approach the problem directly. What they're doing is basically sort of harassing them to try to stop them. In our neighbourhood, they try to deal with these kinds of problems by dealing with the parking nuisance that it generates.

Well, that's not good enough, because what's happening in these premises is a great deal of illegal activity, a great deal of drug sales. We know that there are people using guns and bringing guns into our neighbourhood and people getting shot.

I think I'll just conclude on that note, and if you'd like to ask us any questions, please feel free to do so.

**Mr Duignan:** I'll just briefly tackle the two issues you've raised, and some of my other colleagues may have a question to ask.

On the question of house parties, under the Provincial Offences Act, the problem is getting search warrants for entering the premises. What Bill 198 will do is that the police will be able to obtain a search warrant under the Liquor Licence Act to enter any premises, order people to vacate, arrest without warrant for identification purposes and seize alcohol in direct and indirect proceedings as well. So that's what will happen under Bill 198.

On the question about after-hours bars, basically the same thing will happen. As well, municipalities may be able to question the honesty and integrity of an after-hours bar operator and take action against the operator's municipal licence such as revoking, suspending or placing conditions upon operation.

There are some new, additional powers being given to the municipalities and to the police in dealing with these two problems, so it may begin to solve your problems with those large house parties, as well as after-hours bars.

**Mr Stratton:** I agree.

**Mr Marchese:** I just wanted to thank Mr Stratton and Ms Walker for coming today. Our bill is in response to people like you—

**The Chair:** Mr Marchese, I just wanted to, I think, correct you. It's Ms Semple; is that right?

**Ms Semple:** Marlene Semple.

**Mr Marchese:** Sorry. It's because of the response we've had from communities like yours, and my community, which is where I began my work with my private bill, that we began this process of trying to change the law to give communities and the police and municipalities the power they needed to get to these problems. Current laws do not allow the police and others to be able to solve the problem.

We want to thank people like yourselves, because it's partly connected to the work that you do that we then, as politicians, respond in order to be able to change the laws to make things happen.

1200

I have a question of you because the restaurant association and some others raised this concern. It says in this bill—and yes, I know you haven't had a chance to look at the details; I think you said that in your submission—that “the council or police services board may exercise its powers under” subsection (2), which talks about revoking a licence and other things, “if, the conduct of the applicant or licensee affords reasonable grounds for belief that the applicant or licensee will not carry on the trade, calling, business or occupation in accordance with the law or with honesty and integrity;”

Do you believe that language is good enough to get to the kinds of problems that you were addressing but also to make sure that the honest businesses that are operating are not affected by it so that we have an appropriate balance between the public's interest and the business owners'?

**Ms Semple:** I think it is good. I think currently, if there's a restaurant that is trying to get a licence and we've had contact with the restaurant and we've not had good contact with it, then we will oppose the liquor licence, for example. So right now in our community we've sort of set it up that if someone is going to ask for a liquor licence, they come to the community first, and once the community feels that these people can carry on a good business, that there are not the problems that previously existed—because often in establishments, even though there's a new owner and a different person will come in, it will be the same attraction, the same problems. So we've worked that out and had meetings and people went ahead and got their liquor licences and we haven't opposed them.

That's good. I don't think it's a disadvantage at all. I think it's an advantage for everyone. It's not going to affect people who want to operate good businesses.

**Mr Stratton:** I was struck, in the hearing on the Deluxe Restaurant, by how far I thought the law had gone the other way, where they were regarding the sale of liquor as a right that could not be denied rather than as a privilege that had to be adhered to responsibly. I found that they were far too one-sided in favour of the restaurateur, in my opinion.

**Ms Semple:** Can I just comment on that too, since I'm one of the people being sued directly by the owners of the restaurant because I wrote a letter to a public official on behalf of the community group suggesting there were problems in the establishment? There was literally 70 pages of police information, so they lost their licence for 30 days and that's all they got. I found it was basically unjust that with the information, the drugs in ceilings, the drugs inside of the walls, whatever, that's all they got. It was not a great hardship.

I don't see this as being a problem for good businesses whatsoever. It's shocking what little slap on the wrist they did receive for such a problem and so much of the problem spread within the community that we still haven't solved.

**The Chair:** I'd like to remind the witnesses that they should not speak about any issue that may presently be before the courts.

**Mr Murphy:** I wanted to follow up on an example, without naming any particular business, about the circumstance where the licence ended up being lifted for only 30 days. We had a witness here earlier this morning who talked about continuing problems in getting the current Metro licensing commission, in the municipal context—and you realize this one was a liquor licence—to actually act. I don't know whether you've had time to look at the bill, but on the face of it I actually don't see anything in here that would necessarily result in that institution getting anything more than 30 days. In other words, on some of those issues, because of the way in which Mr



Stratton talked about how there is a bias in the system towards licence holders, there is nothing in here that changes that and we in a sense are leaving it up to them continually. So the results of your application in front of a commission, either the liquor licence board or Metro licensing, could still be the same after all that work. Even with these changes, it could still be only be 30 days. I'm wondering what your comment on that is.

**Mr Stratton:** I suppose that may be clear and that may be something that the government wants to look at. However, I would think that if the Legislature, in passing this bill, indicates to the liquor licensing board, which I understand is an independent board, that it may view these matters more seriously than it has thus far and maybe bring the balance back towards the mean—

*Interjection.*

**Mr Murphy:** No, thank you. I'd like to give the rest of my time to—

*Interjection.*

**Mr Murphy:** I don't know. We're using our caucus time. I'd like to give the balance to my colleague. We have time later on to do all of the details.

**Mr Cordiano:** I'll be brief, Minister. Just a further comment on one section of the act: I'm very familiar with your neighbourhood and that community and I know that many of the establishments are adjacent to residential neighbourhoods. It's very difficult to separate the two. I think even after we deal with the serious problems, residents in my community are still concerned about noise and excessive amounts of traffic, just the general number of people who would come into an area as a result of a series of these establishments having been set up, particularly in the Vaughan-Rogers Road area and places like that, which I think is what you see now.

Part of the act would prohibit the revoking of a licence where the location already existed, where the business location is currently operating. I'm concerned that there is no provision in this act to deal with an existing business in a particular location where there may be ongoing problems around noise and traffic etc, that there isn't enough in here to enable residents to deal with areas like that where there is excessive noise, where there is excessive traffic etc and that these will not be taken seriously by council. Are you concerned about that at all?

I know you've had to deal with very serious problems and I hope we can deal with the serious problems as a result of this act, but there are ongoing problems around noise and excessive amounts of traffic.

**Mr Stratton:** I'm sorry. I'm not sure I understand the intent of your question.

**Mr Cordiano:** The bill essentially says—let me read the section.

**The Chair:** I remind you, Mr Cordiano, that we're well behind your time. However, if—

**Mr Cordiano:** Just to clarify, the "board shall not refuse to grant a business licence with respect to the carrying on of any business by reason only of the location of the business if the business was being carried on at that location at the time the bylaw requiring the licence came into force."

Essentially, you could not revoke a licence that exists, what's there already, by reason of the location. My concern is that there's no real mention of noise as being a factor for revoking a licence or provisions made in the act to deal with excessive noise and traffic and virtual concerns that people have around that kind of impact in a neighbourhood.

I guess you're not concerned about it. That's fine. You don't have to answer.

**Mr Stratton:** We are concerned about existing premises and the businesses in our community are concerned about it. What happens is that if you get a number of bad operators in your area, then good businesses shy away from your area and it's very difficult to revitalize your neighbourhood. That's one of the things we're trying to do hard right now.

The way we deal with bad operators in existing locations is when they come up for renewal of their licence. Possibly the renewals should be more frequent, but that is how we have dealt with various situations now, when they come up for renewal.

**Mr David Johnson:** Thank you for your deputation. I wanted to focus on house parties if I could, and perhaps to help both of us, could I direct my questions to ministry staff? Is that possible?

**The Chair:** Sure.

**Mr David Johnson:** Could you tell us briefly, if you could, because I've only got a couple minutes and I'd like to ask another question or two, with regard to house parties, specifically how this legislation is going to help. I'm asking the staff, if I can.

**The Chair:** You can direct it to the minister, and if the minister can't answer it, I'm sure he'll ask for the staff—

**Mr David Johnson:** I knew this wasn't going to work. Okay. Give me a minute, then.

**Hon Mr Philip:** To answer your question, the police tell us that the provisions will certainly reduce the need for undercover police activities. The police will be able to obtain a warrant under this act if they feel there are reasonable grounds to believe that a liquor offence has been occurring and if they think that they will be refused access. This gives the police considerably more powers to deal with those illegal house parties, the parties which don't even apply for a licence in the first place. The police have clearly said this is a provision which they need, and it's contained in this act.

**Mr David Johnson:** How long will it take them to get a search warrant under these provisions?

**Mr Melville:** I'm not sure I can answer that.

**Mr Mills:** Not long.

**Mr Melville:** Yes. I think it would depend on the facts of the case. They would certainly have to go and apply to a judicial official or a justice of the peace and obtain that warrant.

**Mr David Johnson:** So if there was a house party on a given night, unless they've started the process before, they wouldn't get the search warrant for that particular same night. Is that what you're saying?

**Mr Murphy:** No. It's possible to get it if there's a JP on duty.

**Mr David Johnson:** So maybe in some cases. Maybe, maybe not.

**Mr Melville:** Perhaps I should defer this answer to someone with more experience in the area of obtaining warrants.

**The Chair:** Ms Wise, you would like to respond to this?

**Ms Wise:** It is possible, where there are reasonable grounds to believe that there may be a contravention, to obtain a search warrant in advance, and the obtaining of the search warrant depends on the availability of a justice of the peace.

**Mr David Johnson:** Can you tell me what would be the violation? What aspect of the house party is the violation? The fact that they didn't get a licence? This could be just somebody who lives there who has a big party.

**Ms Wise:** For example, sale of liquor without a licence, and also, besides the ability to obtain a search warrant, the police, under this bill, will have the ability to go in and order all the persons vacated from the premises in such a house party.

**Mr David Johnson:** So the violation would be sale of liquor. Would it be charging admission? Is that—

**Ms Wise:** Any of the provisions under the Liquor Licence Act in terms of the sale and service of alcohol.

**Mr David Johnson:** What about the liquor act as it exists today that indicates that if there's a general admission, open to the public, people aren't allowed to be intoxicated on the premises?

**Ms Wise:** That would also be an infraction of the liquor act, as far as I'm aware. You also cannot sell liquor in a dwelling place.

**Mr David Johnson:** And it's your view that—

**Ms Wise:** You wouldn't be able to get a licence in that circumstance as well.

**Mr David Johnson:** So it's your view that in that case then they could get a search warrant fairly quickly.

**Ms Wise:** As I say, it depends on the availability of the justice of the peace. If there are grounds to believe in advance, as well, one could go. It's my view that it would be possible to get a search warrant quite quickly.

**Mr Jim Wiseman (Durham West):** If they're advertising it, for example.

**The Chair:** Mr Johnson, I must tell you that our time has expired.

**Mr Marchese:** I'd like to correct something for the record, please. I would make the point on page 3 of the bill, section 4, "Where an owner is convicted of knowingly carrying on or engaging in a trade, calling, business or occupation on, in or in respect of any premises or part of any premises without a licence required by a bylaw passed under this act, the court shall order that the premises or part of the premises be closed to any use for any period not exceeding two years."

So it's quite clear we can shut a place down and it can

be for up to two years. So it isn't a matter of simply suspending something for 30 days. We can revoke a licence; we can shut the place down up until two years. So for the record, I think that—

**The Chair:** Thank you, Mr Marchese. We will deal with these issues in clause-by-clause this afternoon. I want to thank the Oakwood Community Group for making its presentation before the committee this morning and part of this afternoon.

I want to inform the members of the committee that our 4:10 pm witness has declined, so we will be into clause-by-clause at 4:10.

This committee stands recessed until 3:30 this afternoon, immediately following routine proceedings.

*The committee recessed from 1215 to 1604.*

**The Chair:** We will continue with Bill 198, An Act to amend the Liquor Licence Act, the Municipal Act and the Regional Municipalities Act and certain other statutes related to upper tier municipalities.

MUNICIPALITY OF METROPOLITAN TORONTO

**The Chair:** This afternoon, our first presentation is the municipality of Metropolitan Toronto, Joe Pantalone, councillor, chairman, 1990 Metro drug abuse task force. I'm not sure who is with you. Perhaps you would identify yourself, please.

**Ms Carol Ruddell-Foster:** Carol Ruddell-Foster, general manager of the Metropolitan Licensing Commission.

**The Chair:** Our witnesses have 20 minutes to make presentations. Before we start, I would like to let the committee members and the other witnesses know that there has been a cancellation and there may be a party willing to fill that cancelled spot. I'd just like to put the question to the people who are here now. I believe Michael Thomas is here. I just want to inform you that you will have to wait approximately 40 minutes before you'll have that opportunity, but if you're willing to wait, we do have a spot for you. Okay. I must also get unanimous consent of members of the committee. Is that agreed to?

**Mr David Johnson:** Are there any other people here who would wish—

**The Chair:** We only have one cancellation, Mr Johnson, one space to fill.

**Mr David Johnson:** I appreciate that, but other than the gentleman in question, is there anybody else who's shown up who wishes to make a deputation?

**The Chair:** I don't think so.

**Mr David Johnson:** Maybe you should ask.

**The Chair:** According to the clerk—is there anyone else here?

**Mr David Johnson:** If there's only one person, that's fine. Is there anybody else?

**Mr Wiseman:** Aren't we going to run into a little bit of a time problem?

**The Chair:** No. With respect to the committee, we can sit till midnight, quite frankly, but with respect to our witnesses, we have—



**Mr David Johnson:** Maybe the clerk could figure that out as we get down there. If there's only one, there's no problem.

**The Chair:** All right. Then it would appear that Mr Thomas will have an opportunity in about 40 minutes.

We'll start the clock, if you would like to start your presentation.

**Mr Joe Pantalone:** As pointed out earlier, I'm here not only on behalf of myself as the former chair of the Metro Toronto drug abuse prevention task force, but also as the representative of the Metropolitan Toronto chairman from the municipality of Metropolitan Toronto.

As you may be aware, in 1990 Metro Toronto council adopted a number of recommendations of the Metro Toronto drug abuse prevention task force. Four of these recommendations, which are attached to this submission, relate directly to licensing issues in general and to activities of so-called after-hours clubs. Since adoption of the report of the task force, there have been numerous discussions with the province on the legislative amendments required to bring these recommendations into effect.

Bill 198, the Municipal and Liquor Licensing Statute Law Amendment Act, 1994, addresses some of the issues raised by the Metro Toronto drug abuse prevention task force and we commend the action taken by the government to bring forward this legislation.

Specifically, the municipality of Metropolitan Toronto is pleased to see the following amendments proceed:

One, increasing the maximum fines for municipal licensing infractions to \$25,000 for individuals and \$50,000 for corporations and allowing for the seizure of a business's equipment for the non-payment of fines imposed.

Presently, the maximum fine of \$5,000 is of little deterrence to owners and corporations but is considered just the cost of doing business. The Metro drug abuse prevention task force recommended that increasing the level of fines was a message to licensees that infractions of the terms of a licence are very serious offences. In addition, at present, when convictions are entered against owners of establishments, the corporate owners will often dissolve the corporation and the fines remain unpaid. Therefore, distress upon the goods of the corporation would be a useful tool to ensuring that the fines are enforceable once the courts have determined that there has been a violation of the bylaw and imposition of a fine.

Secondly, the ability to impose conditions on individual business licences by the Metro licensing commission will allow the commission to respond to local concerns and the past conduct of business owners.

The Metro drug abuse prevention task force suggested in its recommendation 1, which is attached, that drug trafficking could be controlled to some extent by the imposition of conditions. The task force stated that in the colder times of the year, traffickers move indoors and premises that remain open all night become hangouts and ideal locations for the drug trade. Municipalities need the power to impose conditions on licensed premises, includ-

ing conditions for restricting the hours of operation, in order that businesses in those areas experiencing such situations as drug trafficking problems may be restricted in the hours that they are permitted to remain open.

At present, the licensing commission has the authority only to impose conditions on licences across a business class, for example, all doughnut shops. Therefore, the problems or concerns about a specific business or business activity cannot be adequately addressed.

#### 1610

The third element is that other very positive elements in Bill 198 include the ability of the courts to close any establishment convicted of contravening a municipal licensing bylaw and the provision for greater cooperation between the Metro licensing commission and the liquor licence board.

The one provision of Bill 198 which may merit some reconsideration is subsection 2(5), which does not provide an express ground for suspension or revocation of a licence or the imposition of conditions on a licence in respect of infringement to the rights of members of the public. In many instances it is not the activity of the business owner that is illegal per se but the actions of the patrons that may become a safety issue in the community at large.

Presently, section 11 of the Metro licensing bylaw 20-85, which is attached for your reference, includes such a public interest ground that has worked well in the past for the licensing commission. Clause 11(1)(e) of bylaw 20-85 reads as follows:

"(e) the conduct of the applicant or other circumstances afford reasonable grounds for belief that the carrying on of the activity by the applicant of the business in respect of which the licence is sought would infringe the rights, or endanger the health or safety, of other members of the public."

While subsection 2(5) of Bill 198 states that the two grounds specifically set out in the act do not limit the discretion of municipal councils, we would still recommend the inclusion of public interest as a stated ground within subsection 2(5). This would provide clarity and prevent any possible challenges to section 11 of the Metro licensing bylaw 20-85 and the reading down of this bylaw by the courts to conform to the more limited criteria in Bill 198.

I would also like to add that I gather a concern has been expressed by some city councillors with regard to whenever a council resolution requests a hearing. Let me assure you that the Metro licensing commission takes and will take most seriously any such requests for a hearing. However, as you can appreciate, the licensing commission is a quasi-judicial body which operates at arm's length from the political body and as such must investigate such requests and, if indeed they're found to be justified, then a hearing will be held but, regardless, the council will be communicating to as to the findings.

Again, I'd like to emphasize that the Metro Toronto drug abuse prevention task force represented all six area municipalities within Metropolitan Toronto, Metropolitan council, the police force, the Metropolitan Licensing

Commission, the school boards and rehabilitation organizations. As such, it was as comprehensive a group as ever and its recommendations were pretty well unanimous in terms of the issues that are before you today. Therefore, we strongly urge you to pass Bill 198 as soon as possible and look forward to its early proclamation, which will allow municipal council to address the very real and urgent concerns of our communities.

As I indicated earlier, Ms Carol Ruddell-Foster, the general manager of the licensing commission, is here, should you have any questions about the actual operations of the licensing commission today.

**The Chair:** I would like to inform the committee at this time that I was wrong in my previous statement to the committee and to the presenters here today. There is an order in the House that says that at 4:30 pm, regardless of any other matter that's before this committee, we will start clause-by-clause consideration.

What that means then is that we have, as you can see, the time left on the clock from now until 4:30 to hear all witnesses. It's regrettable but it's an order of the House that this will happen and it's not something that was decided by this committee. It's not something we can change. Therefore, we will continue with the matters before this committee and we will continue with the municipality of Metropolitan Toronto.

**Mr Murphy:** Mr Chair, if I could propose that—

**The Chair:** I'd just suggest that the time is getting away from us.

**Mr Murphy:** No, I understand. Just very quickly, given that some of the other presenters are here, maybe we can all give up our questioning time to let each of the presenters at least make their presentation.

**The Chair:** If we have unanimous consent for that, then we can do that. Agreed.

**Mr David Johnson:** The police are here, aren't they?

**The Chair:** Yes.

**Mr David Johnson:** Well, we should hear from them.

**The Chair:** Thank you very much for your presentation. There will be no questions, as agreed to by the committee members. I would now call the Ontario Association of Chiefs of Police and the Metropolitan Toronto Police Force.

**Hon Mr Philip:** Maybe we can thank Mr Pantalone for the work. His work certainly prepared the way for this bill.

**The Chair:** Thank you very much, Mr Pantalone and Ms Ruddell-Foster, for making your presentation before the committee today.

ONTARIO ASSOCIATION OF CHIEFS OF POLICE  
METROPOLITAN TORONTO POLICE FORCE

**The Chair:** The Ontario Association of Chiefs of Police and the Metropolitan Toronto Police Force, Bill Tedford, staff inspector, Metropolitan Toronto Police Force, and another individual I must admit I'm not familiar with.

**Mr Bruce Crawford:** I'm Detective Sergeant Bruce Crawford, Metropolitan Toronto Police Force.

**The Chair:** As you know, we're under time constraints now, if you'd like to proceed.

**Mr Bill Tedford:** It is with pleasure that we appear before this committee today to deal with Bill 198 as representatives of the Metropolitan Toronto Police Force and the Ontario Association of Chiefs of Police.

After reviewing Bill 198, we are very pleased with the contents. Generally, we believe the bill will assist police forces across this province in combating illegal after-hours clubs, those non-conforming licensed premises, as well as those very large and disturbing house parties within our communities.

With regard to part I and the Municipal Act, having listened to Mr Pantalone, I think he's done quite a bit of research and we are satisfied with the new provisions and authorities under the Municipal Act and are satisfied that they are workable throughout the province based on specific problems associated to those specific regions or municipalities.

The amendments will be of great assistance to all enforcement agencies located within those municipalities or regions as well and including the police forces.

With regard to the Liquor Licence Act, generally we are very pleased with the amendments and additions to the act and specifically:

—The extended authority to revoke special occasion permits. I won't bother getting into all those sections and items on your bill. You have a copy of my presentation.

—The new authority to obtain search warrants under the bill.

—The extended authority to conduct inspections has basically empowered the police to act as liquor inspectors and we've very pleased about that.

—The extended arrest authority which now has been extended to include violations under the regulations, which was missed before.

—The new proceeds section which makes it an offence to be in possession of proceeds in contravention of the act and gives the police the power to seize those proceeds, which is very necessary to a proper enforcement standpoint.

—The extended or expanded authority to seize property used or expected to be used in an offence, including liquor, which allows us to stop a continuation of offences from being committed.

We do have a couple of concerns, however, and under section 14, the new subsection 34.1(1) of the act, we don't see an offence section. We would like to see an offence section for failing to comply with an order to vacate. The difficulty is we can make the order to vacate, but there's no offence if a person decides to buck that order and has identified himself etc, and we could have a real problem.

As well, under the same section, we would like the act itself to state the specific use-of-force section to carry out the order to vacate.

We are aware of section 130 of the Provincial Offences Act, which gives a blanket authority to use reasonable force to effect a lawful purpose. However, an officer who



is working on the street for the purpose of simplification and speed of research may not be aware of that implied section, and we would like to have that authority spelled out in the act itself, along with that offence section and the authority to use force in order to clear a place. When you're dealing with a club or an after-hours premise or any premise that could have as many as 1,800 people, as we've experienced, it's nice to have that authority in front of you.

The extended order to seize does not appear to include the regulations. It may be an implied authority taken from somewhere else in the act, but from our perusal through it today, it doesn't appear to be there. An officer in executing this section may not be aware of that implied authority and could perhaps overlook it and not be able to execute his duty in the way or fashion in which this bill intended.

As well, all the administrative authority comes under the Provincial Offences Act for fines, collection or how the courts sit etc. The Provincial Offences Act has not been addressed in this bill to correct the problem of the inability to collect fines such as now noted under the new section 330.1 of the Municipal Act which allows for seizure or distress for goods or chattels due to non-payment of fines.

Without the ability to seize goods, chattels or property, as stipulated under the Municipal Act or an ability to incarcerate there, there is not much deterrence to continuing the offence by individuals who have found a great profit motive. We have quite a difficult time with large fines coming out which are unable to be collected. It also brings up the situation where other means must be tried before they'll issue a warrant of committal.

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I'm of the opinion that once you enter the civil court system for a judgement, and if the judgement is granted, that the ability to go for a warrant of committal is really null and void, and the judgement under the civil action if the person has no property or of any substance really becomes a non-issue in the ability to collect. So we would like to see the ability to seize goods and chattels or property as stated within the Municipal Act applied to the Liquor Licence Act as well, or an ability to incarcerate therein so there is a deterrent to continuing the offence by individuals who have found a great profit motive for continuing.

There's one other area that we came upon. Special occasion permits create difficulty for us. It is still not necessary for a person to provide identification when applying for a permit, that we're aware of in this act. It makes it difficult because they can go to any licensed premise for the purpose of selling liquor under the Liquor Control Board of Ontario, the outlets, and receive a permit without producing identification, and for follow-up for policing or enforcement purposes it would be nice to have that necessary, to produce proper identification before a permit be issued.

If these concerns can be addressed, we believe the repetitive offenders will be discouraged and there will be less likelihood of the offences being committed in the first instance.

That is a very short overview, and I certainly appreciate your time. It was a very short overview to our concerns and our feelings with regard to the bill. Overall we feel it's a very good bill and we're very much pleased to see it before the committee.

*Interjections.*

**Mr Murphy:** We have some questions.

**Mr Marchese:** No, there are others; I'm sorry. We still have another 10 minutes. Not that I don't want you to ask questions, but we do want to hear from someone else. Mr Chair, we have other deputations.

**The Chair:** We'd like to come to some conclusion with respect to this. There was someone who we agreed would fill in the spot that was declined.

**Mr Marchese:** Mr Michael Thomas is here from TEDRA and it would be wonderful to hear him.

**Mr Mills:** I voted for the whole process to be no questions.

**Mr Marchese:** Don't waste the time.

**The Chair:** Let me say from the Chair's perspective that we had agreed and I understood that we were going to just hear from the presenters, including Mr Thomas, who is waiting.

**Mr Wiseman:** If we get through the next presentation and we still had time left, we could bring them all back and ask a question each.

**Mr Murphy:** We don't need to look at the wall until the end of Mr Thomas's presentation.

**The Chair:** No, we can't do that, Mr Murphy. There's an order in the House.

I would like to thank the Ontario Association of Chiefs of Police and the Metropolitan Toronto Police Force for making your presentation. It's appreciated very much and it's regretful that we don't have more time for questions.

**Hon Mr Philip:** Maybe you could wait for 10 minutes in case there is an opportunity, if you wouldn't mind.

**Mr Tedford:** Yes, we will. We'll stand down.

TORONTO EAST DOWNTOWN  
RESIDENTS' ASSOCIATION

**The Chair:** Mr Michael Thomas, if you would come forward now, please, and make your presentation.

**Mr Michael Thomas:** I'd like to thank the members of the committee for this opportunity to address you. This bill actually originated in our neighbourhood in east downtown Toronto. Rosario Marchese is our local MPP, and in an effort to deal with a new problem in our neighbourhood, that of crack dealing, we have looked at many different ways of making our neighbourhood safe for the residents who live there, 3,000 residents. We have Metropolitan United Church, Ryerson Polytechnic University, Sears Canada corporate headquarters. It's a very rich downtown neighbourhood that has been invaded by crack dealers; specifically, a 24-hour doughnut store at the corner of Jarvis and Dundas.

In December 1991 it became the venue for this crack trade at all hours of the day and night. Residents have put up with violence, shootings, knifings, weapons hidden on

their premises, all centred on this doughnut store. We have worked with the Metro licensing commission for over two years to hold the owner of this store responsible for the business conducted on the premises, to no avail. Everything is in suspended animation. We feel this legislation is a step in the right direction so that the Metro licensing commission can make business licensees accountable to the business conducted on their premises.

**Honesty and integrity:** The fines suggested by this legislation will give those two words meaning to business owners. In fact, the crack trade continues at this doughnut store. It operates outside the law even though hundreds and hundreds of police arrests for crack dealers on the premises have occurred. This bill will end the nonsense at that location.

We also have in our neighbourhood an after-hours club. In April we met with the owners of that club. They assured us—and the police were there and representatives and Rosario was there—that they would be operating with honesty and integrity. That was in response to a shooting in March.

Well, May 24 weekend, there was a riot at that club, shootings; 200 police officers were called from across Metro. We were assured once again that they would operate with honesty and integrity.

October 9, early morning: another riot, another shooting.

So this legislation was appended to Rosario's private member's bill. It became Bill 198 in response to the after-hours problem in Metro, in London, across Ontario.

We were assured by the police that they had calmed the situation at this particular after-hours club. In fact, last weekend, November 28, Sunday morning, another shooting occurred—sorry, two weekends ago. The TEDRA foot patrol—these are residents who go out to do neighbourhood watch in our neighbourhood—went to this site last Saturday evening and there was another party happening there. They had no special occasion permit. The liquor licence board, in a fast-track hearing, had revoked all SOPs for this location due to pressure on them to do this. Metro licensing had flagged their business licence for not renewing it when it came up for renewal. However, this particular premise continued to operate as a party centre. Once again there was drinking going on, there was violence, and the residents had to put up with noise well into the early morning.

This bill will address that problem and save the taxpayers of this province a lot of money in terms of policing in the long run.

I'd like to thank Rosario for his efforts in bringing this to the House's attention and the three ministries involved in addressing all of these business licence problems. We think it's a privilege to have a business licence, not a right. This legislation will go a long way in forcing business owners to be responsible members of our community.

Just as an aside, two doors from this particular doughnut shop was a Kentucky Fried Chicken outlet. They left. They have a seven-year lease; they continue to pay their rent. They refuse to do business next door to what really

was the Wild West, and continues to be.

I'd like to invite members of the committee to meet at Dundas and Jarvis tonight at 9 o'clock. The residents are doing another foot patrol. You will see this doughnut store and you will see the nonsense that's going on there. It's now over two years; in fact, this is three years. So we urge all parties to support this legislation.

**The Chair:** I might just ask you: You represent the community of?

**Mr Thomas:** We call it east downtown Toronto. I'm the president of TEDRA, the Toronto East Downtown Residents' Association. It goes from Yonge Street to Sherbourne and Gerrard down to Queen. It's a 24-city-block area of 3,000 residents, businesses etc.

ONTARIO ASSOCIATION OF CHIEFS OF POLICE  
METROPOLITAN TORONTO POLICE FORCE

**The Chair:** We have about three minutes left if the committee would like to have the representatives of the police association, Metro police, back. We've only got three minutes.

**Hon Mr Philip:** While they're coming forward, I'd like to table with the committee a letter that was received from Mayor Mel Lastman, who couldn't be with us but who is in very strong support of this bill. Copies will be distributed.

I also would like to report to the committee that as a result of the presentation from the restaurant association, I will be tabling one amendment that will be circulated to you. I think it meets some of their concerns and is supported by—

**The Chair:** Thank you, Mr Philip. We have very little time. Mr Murphy, if you could take only a minute.

**Mr Murphy:** One of the questions I have is relating to the order to vacate and then the search warrant. I'm just trying to work out how this bill will actually work in a house party situation.

I guess my concern, and I don't know whether you've had the time to look at it, is, if you show up at a house party premise and are denied entry, how long, practically speaking, would it take to get a warrant under these provisions as they're drafted so that you can go back and break it up? That's basically my question, if you've gone through it in that detail.

**Mr Tedford:** It's maybe a little difficult to answer in specific terms simply because, where is the justice of the peace located who we have to get? That has always been a difficult situation for us at any time. Traditionally, up until midnight we can find a justice of the peace. Monday to Friday, we can find a justice of the peace usually at one of the jail centres doing bail conditions or releases or perhaps sitting in court.

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The problem arises after midnight and on weekends. It's a little more difficult, usually because they're in their houses. We have to phone, find out where they are, attempt to either get them to us or us to them. It can be a matter of hours or it can be a matter of half an hour. Unfortunately, most of our experiences have been it takes longer than sooner to get the warrant, and it is a particu-



lar concern. That's another agency that we don't have control over.

**Interjection:** Four hours?

**Mr Tedford:** Four hours or—

**The Chair:** Thank you. I'm afraid we're going to have to continue with clause-by-clause. Our time—

**Mr Murphy:** It's still 4:29.

**Mr David Johnson:** You're being a little bit strict here.

**The Chair:** A little strict? No, I'm just—

*Interjections.*

**The Chair:** I want to thank you once more for coming before the committee and answering at least one question. Thank you very much for making your presentation today.

I'd like to ask the committee at this point in time: We are going into clause-by-clause by order of the House. There was a consideration by the committee with respect to using part of our clause-by-clause time to question the ministry staff.

**Mr David Johnson:** Mr Chair, at one point you said that because we weren't going to have the opportunity to quiz the police, there would be a period afterwards, maybe out there somewhere, we could ask—

**The Chair:** You're out of order, Mr Johnson.

**Mr David Johnson:** I'm just asking a question.

**The Chair:** You're out of order, Mr Johnson.

**Mr David Johnson:** Is it okay to ask a question in—

**The Chair:** But you're out of order.

**Mr David Johnson:** —this sort of Stalin-like approach that we have here?

**The Chair:** I just remind you that you're out of order, Mr Johnson, and what we are now in is clause-by-clause. Of course, if it's of any interest to members of the committee, I can read what it says in our orders. It says, "With unanimous consent, the standing committee on finance and economic affairs was authorized to consider Bill 198 on Tuesday, December 6, 1994, from 10 am to 12 noon and from 3:30 pm to 4:30 pm in hearings, and from 4:30 pm to 6 pm in clause-by-clause and the bill will be reported back to the House on Wednesday, December 7, 1994."

Because the committee mentioned that they were interested in questioning, in the clause-by-clause period, ministry staff or the minister, I wanted to know how they would like to proceed with respect to that. Do we want to go directly into clause-by-clause, section by section, or is there still a wish of the committee members to put some questions with respect to the bill to the ministry officials and the minister?

**Mr Marchese:** I think we would be flexible to the members if they want to ask questions now of the ministry or as we do it in clause-by-clause. During that time, the members of the opposition and our own members have the time to ask civil servants questions that they might have before dealing with the issues. So either way.

**The Chair:** So you're suggesting that if we go

through clause-by-clause, as we come to a particular section they may pose questions with respect to that?

**Mr Marchese:** Yes.

**The Chair:** Are the rest of the committee members in agreement with that?

**Mr Mills:** It sounds good to me.

**The Chair:** Okay. The clerk is going to distribute government amendments, and that will take just a moment.

We shall proceed, then. All the members should have their government amendments, and there are some PC motions as well.

We will start with section 1 of the bill. I would ask if there are any comments or concerns with respect to section 1 of the bill. Seeing none, shall section 1 carry? All in favour? Opposed? Carried.

We have a number of amendments to section 2, and I've been advised by the clerk that we will deal with the amendments in this order: We have the first three amendments from the Progressive Conservative caucus, then we have the government amendment, and then we will finish with the Progressive Conservative amendment. With respect to section 2, I'll move to Mr Johnson.

**Mr David Johnson:** I move that section 2 of the bill, section 109.1(2)(d) of the Municipal Act, be amended by striking out "at the time it is granted or."

If the conditions are required before the licence is even granted, then the applicant obviously does not fit the criteria of the granting authority. If the licensee demonstrates that he or she is not carrying on business in the manner that was understood as required when the licence was granted, conditions should then be applied. This is a submission that was made earlier by the Ontario Restaurant Association, I think, in particular.

**Hon Mr Philip:** I would urge members of the committee to reject this. There are many circumstances that may warrant that a new business application be subject to certain conditions. Licensing authorities need the power to consider these circumstances to impose proper conditions where necessary, including those on new licences. For example, it might be reasonable to impose a condition that there be compliance with the municipal property standards bylaw before the licence would be effective.

The other problem I have with this amendment is that it would give a loophole to offending parties. It would allow somebody to simply change owners and have the ownership of the particular doughnut shop or whatever transferred into the person's relative's name or friend's name. Therefore, you could have the same perpetrators of a series of very nasty things in a community happening over and over and over again because it would be a new licence and the original conditions that were necessary to help control the problem would be removed. I therefore would urge you to defeat this amendment.

**Mr Murphy:** Just some questions on the amendment: I think I understand the purpose and I support the purpose. That being said, when I talked about this last night I wasn't sure whether this was the wording that would get at the concern either, because I share some of what the minister said in terms of someone being able to

just change their corporate garb and come back again.

The question I have is, and probably the ministry staff can answer this, although the minister can as well, what are the provisions and what is the authority and what kinds of rules currently govern a council or a police services board in piercing that corporate veil? In other words, the assumption built into your example, which is they want to impose a condition so you can't just change the garb: What authority does the police services board or the council have to look through that now? If they don't have that authority, there's nothing in here that would provide that opportunity other than the broad powers that clause 109.1(2)(d) gives.

My concern would be, I think, twofold: One, I would want an opportunity, where someone was just changing their corporate cloak, to make sure those conditions could be imposed, but I don't want it to be too broad. I'm just trying to find a way through those two matters.

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**Hon Mr Philip:** I'll ask my legal staff to advise you on the legal matters and that; I'm not a lawyer.

**Mr Melville:** The act expands the number of circumstances where conditions could be imposed on a licensee from the beginning. The act has not changed the law in respect of what evidence might be taken into consideration at that hearing, except in so far as it adds the honesty and integrity requirement.

I can't really speak beyond that in terms of piercing the corporate veil, other than to say that it suggests that the evidence would be evidence that would be at the hearing and would be taken into consideration.

**Mr Murphy:** I guess my concern is really this: If it in fact has been the practice to date, which I have heard it is from the people who came and gave us depositions, that people can just change the cloak and get a new licence, the question is, why has that happened? Is it because there just is no power here to impose a condition, never has been to impose a condition on a new restaurant licence, and as soon as it's got its Party 1995 Inc instead of Party 1994 Inc, it's enough so that the current licensing commission before this law says, "Oh, hear no evil, speak no evil, see no evil"? It strikes me as odd, that's all, that this is the current case.

**Mr Melville:** Under the existing Municipal Act, conditions can only be imposed in respect of a few classes of licences, and this would expand it to all classes of licences, so that's the main difference in that respect.

**Mr Murphy:** Okay. All right. What I'm getting at, then, is that in those classes where this power has been used before, have they been able to do what we're hoping it can do, which is pierce through that changed corporate garb? I mean, have they been able to do that in those circumstances where they've already had the power?

**Mr Melville:** Beyond that I can't really speak to it, other than to say that there have been many cases where municipalities have been able, through their licensing bodies, to make licensing decisions after a hearing, including imposing conditions.

**Mr Murphy:** I'm just wondering if there's anybody here who knows.

**The Chair:** Is there anyone in the committee room today from Consumer and Commercial Relations who could answer this particular question? I guess not.

**Mr Murphy:** Have you had experience, Rosario?

**Mr Marchese:** Part of my comment is to agree with what Minister Philip had said originally. I'm also concerned about what Tim Murphy is raising, as well as the restaurant association. My understanding is that there haven't been too many examples that we can offer where this has been used at the present time. Part of the complication was that the law wasn't very clear and therefore it probably never was used, to begin with. But where it did apply in relation to some of those few classes, I understand there weren't too many examples of problems around those classes with respect to it. So I don't know that I can say much.

But I support the current language that's here, only with the intent that it will be used where reasonable grounds exist to impose conditions on those establishments that obviously have created a problem. It will not be applied willy-nilly, as I understand it, but where there are reasonable grounds that will apply. If that's the case, then I accept the terminology that's there that says "at the time it is granted." I understand the fear, but I don't accept the fact that it will happen to everybody, because the language is there. I don't think that it will be the intent of licensing boards to simply say, "Ah, here's an opportunity for us to shut people down." That has never been the intent in the past, and I don't think that because we're changing the law all of a sudden people are going to say, "Here's an opportunity to clobber well-established businesses."

I really think that what's here will get to some of the problems that are there. The minister identified one type of example where this will be very useful in terms of our ability to get to people who have broken the law, come back with another name or transferred to a parent or relative and keep on going. I support the language that's here.

**The Chair:** Any more discussion? All those in favour of Mr Johnson's motion? All those opposed? The motion is lost.

**Mr David Johnson:** The next one is with regard to clause 109.1(5)(a).

I move that section 2 of the bill, section 109.1(5)(a) of the Municipal Act, be amended by adding after the words "with honesty or integrity" in the last line, the words "as defined in the regulations."

Here again, by way of explanation, we discussed this this morning with regard to the Ontario Restaurant Association. I'm just trying to recall, but I think maybe the Ontario Chamber of Commerce raised this issue as well.

The words "honesty and integrity" probably will be defined differently under different circumstances. I guess one could ask just how honest is honest and how much integrity implies integrity. I think there's a concern for a level playing field. Certainly, I believe it's known what the government is attempting to do here: It's to ensure that if there are people who "lack" honesty and integrity



in the estimation of the authorities, this could be part of the process in terms of granting the licences etc.

However, with the lack of definition, there was another deputant, I think, who suggested that it should be changed to community—I forget what his words were now exactly—

**Mr Marchese:** Public interest, community interest.

**Mr David Johnson:** —public interest, community interest or something of that nature, which again shows that there is a concern about this phraseology.

What this amendment would do, because it's obvious we're not going to be able to define that in the time that's available here this afternoon and the time that's available this week to come to grips with it, is simply allow the government to put some boundaries around this, to make sure that there's fairness in this concept through the regulations.

I think that's a little bit open, but that's about the best we can think of at the present time as to how to come to grips with the concerns. Unless somebody has a definition that they wish to slide in at this moment that would make everybody happy, I know of no other way to buy some time, sit back, listen to all the concerns and try to make this phraseology fair for everyone. That's the sense of the motion.

**Mr Murphy:** On a point of order, Mr Chair: Just a question about procedure. Actually, I had a question about subsection (4). We haven't—we can still discuss this as long as I can just go back to subsection (4). We have no problem with that?

**The Chair:** Sure.

**Hon Mr Philip:** You may want to have Mr Johnson move his next amendment, because I think we could probably deal with them together, if that's okay, Mr Chairman.

**The Chair:** If Mr Johnson's willing to do that—

**Mr David Johnson:** It's the same sort of rationale. If you want to have two motions on the floor at the same time, I move that section 2 of the bill, section 109.1(5)(b) of the Municipal Act, be amended by adding after the words "with honesty or integrity" in the last line, the words "as defined in the regulations," with the same sort of rationale.

**The Chair:** I was just advised by the clerk that you could amend your first motion just to say "109.1(5)(a) and (b)" and it would—

**Mr David Johnson:** If that would make it easier for all concerned, I'd be happy to do that.

**The Chair:** Then we can deal with both of them at the same time.

1650

**Mr David Johnson:** I'd be happy to do that then. Can you consider that done?

**The Chair:** Thank you, Mr Johnson, for doing that. Mr Philip, you had a comment with respect to this?

**Hon Mr Philip:** I appreciate what Mr Johnson wants to do. It was a struggle to get a balance in this bill. He mentioned that there were those who had advocated "public interest," indeed, in Windsor, which goes further

than our legislation. That has not been misused. However, we were concerned, and I'm sure groups like the Ontario Restaurant Association would be very concerned, about that because it is open to too wide an interpretation. We felt that those who were advocating that kind of power were being excessive, that a higher standard needed to be used, and therefore we refused to go that route, even though we recognized that the city of Windsor and its elected people have not abused their privileges of that.

We weren't completely convinced that somebody at some point in time might not use it in a discriminatory way against some group. Because, you know, let them who are without sin cast the first stone. I'm sure that there would be possibilities for that.

The municipalities are very firm on this matter, I think. They don't want a prescription. They basically want a framework and they feel that common sense will allow them to deal with the local situations, but at the same time we've put a certain onus on it and built in a certain number of safeguards in terms of review and judicial review.

The words "honesty and integrity" are used in other acts by the government of Ontario and have worked. The problem with being overly prescriptive is that there's always someone who can find a loophole. The more prescriptive you become, the more the lawyers will get out there trying to find the loopholes. I think that what you have to do is to at least accept that most people, including municipal councils, operate in an interest of having as many businesses as possible operate in their municipalities and pay taxes—they're not in the business of closing up businesses unless there's some reason to do so.

You have to rely that the courts will have to look at certain circumstances and judge certain circumstances and from that will come a body of experience, if you want, of common sense and usage. Therefore, I would not want to be overly regulatory. I would rather trust the municipalities and trust the courts to deal with this in a common-sense manner. I understand where you're coming from. I just worry about being overly centralized, bureaucratic and technocratic in imposing that on the municipalities.

**Mr Cordiano:** I hear what the minister is saying, but I don't think that dealing with sections of an act in as complete and wholehearted a way as the way in which we are attempting to do here—I have some sympathy with this amendment. In fact, I had suggested this morning that the minister look at regulations to deal with this matter.

I don't believe that it would be a highly bureaucratic or highly centralizing piece of legislation that attempts to give a broad framework. I think what we're really talking about is how effective that framework is by the words that are used here with "honesty" or "integrity" and leaving it at that rather than giving a greater definition to that meaning, following some guidelines or guideposts that can be used across the province evenly. I'm more concerned about the fact that it would be used across the province evenly, and to that suggestion I think it would be that you would get broad inequities across the province on how this is applied. My concern stems from that, that we have in fact something that would be used evenly



across the province with respect to the implications around that section.

**Hon Mr Philip:** I think there are restrictions on it. The restrictions we've put on it are that the honesty and integrity has to pertain to the individual activities that the business is taking part in. If you look at the bill, basically what we're talking about is, is the person honest and showing integrity in the kinds of things that the business is operating in? If, for example, someone had been convicted of an election fraud and then operated a doughnut shop, one would think that while that may not be a very savoury character we'd want to associate with or by doughnuts from, none the less it might not interfere in his or her being able to operate a doughnut shop. It has to be related to the kinds of operation that person is under. On the other hand, if he was a crack dealer, then we would certainly be very suspicious about having him operate an all-night doughnut shop. There is that restriction.

I also think the way in which you get some stability or uniformity province-wide is that the courts will interpret, as they've done in other statutes, how it will be applied in this statute and that out of that will emerge some semblance of similarity between one community and another. I would urge that it be defeated.

**Mr Cordiano:** Just to finish off, I think what the minister is telling me is that, in effect, each of these difficult cases or cases around where there are questions in applying this section would end up in court, necessarily. I would think that we would like to try and avoid all of the inherent costs associated with appeals that reach the level of our courts and try and avoid that by drafting legislation which becomes more effective and efficient to be used by municipalities.

**Hon Mr Philip:** What I'm saying is the exact opposite, that if you're overly prescriptive, then you end up in court cases because there is a constant attempt by some individuals to interpret or to get around the particular prescription. If you rely on common sense to prevail in the local circumstance, and if you've restricted it in the way in which we've done the bill, you're less likely to have any kind of litigation.

**Mr Murphy:** I think that's, in a sense, sort of missing the point of what's trying to be done with this amendment. I support the amendment. I think the purpose is really a couple of things: One is that you're going to get lawyers going at this whether you've got no flesh on the skeleton or it's a full thing. Either way, there's going to be lots of fighting over it, if it can be afforded. I think there's a certain irresponsibility in saying, "Let's leave it up to the courts to determine," because what that is going to mean in practice is you're forcing citizens engaged in business in this province to spend a lot of money to go through the court process to determine what it means after the fact as opposed to giving them some general guidelines before the fact.

The theory that you prescribe in particular, that it will result in picayune disputes about whether it applies or not, can be true of the Income Tax Act, for example, but that's because there are presumptions etc that apply. In this case, I think when we say "honesty and integrity"

what we mean in a general sense is that four or five factors need to be satisfied by a council as to those provisions and that's it, and they can be statements of value as opposed to detailed prescriptions of the circumstances and cases in which they apply, so that both the council or the police services board or the commission, as appropriate, and the businesses in the community understand what's required, understand what's going to be needed in terms of making the application in the first place.

As it is now, we are dumping an incredible responsibility without any guidelines on to councils and businesses that will, after the passage of this bill, be obligated to conduct themselves according to its provisions without any idea of how it applies, which I suspect will give us many, many more court cases and much more money spent on lawyers as opposed to productive business than you would if you gave some sense of where you thought it applied.

1700

My other concern about this, though—and I know you've said that these words are in other statutes, and that's true—is that this is in a new context. The words generally have been included in cases where it's a tribunal exercising a power of decision-making. We are now giving these for the first time to a municipality that does not have experience as a tribunal, is not a tribunal.

So I'm not sure your arguments in favour of just taking this newly born bird and tossing it out of the nest and saying, "Go fly," is enough to make it do anything but fall on the ground. I think we've got to give ourselves the scope to give some sense of the direction, and that will be of help to both municipalities and the businesses that are going to have to govern themselves by the legislation, after Thursday, presumably.

**Hon Mr Philip:** I can respond to you this way: I think statements of value are open to more interpretation. The fact is that many municipalities in this province already have the words we are using in the act. Basically, what we are doing is giving them the power of statute and therefore more power in the court.

There's been no evidence that municipalities, such as Metropolitan Toronto, that have used this wording for years have abused that authority. You've been a lawyer practising in Toronto for a long time. Maybe you know of instances where Metropolitan Toronto has abused this authority under its act, but the fact is that I know of none, our staff know of none, it is used in other acts, and I think the suggestions you're making would result in more interpretation, more confusion, if you want, and more litigation.

I think we just have to rely on the common sense of municipalities to impose this in a commonsense way, the way they have done in the past, but in a way they can actually have upheld in the courts, and that's the purpose of this. Municipalities have had it. There's a been a problem in getting it upheld in the courts. This gives it the weight of statute so that what they've been doing for years will in fact be more effective if and when they reach a court.



**Mr Murphy:** I'm not saying, "Don't give the power." We're not voting against the clause as a whole; we'll support the clause as a whole. The question is the circumstances in which it is applied and the degree of direction you give to the people who have to use it.

I think it's a fair question for a business owner or a reeve or a police services board member across this province to wake up on Friday morning and say, "Gosh, we have a whole bunch of new powers," or "I am subject to a bunch of new powers as a businessperson. Well, what does this mean I'm going to have to do?" I don't think it gives the direction that is sufficient for enough certainty either on the business perspective or from the municipality's perspective.

The intention in this amendment is pretty straightforward. It's to provide the option too, and in order to fix it, if you're wrong, you'd have to amend the act. What this will permit is, if I prove to be correct and you prove to be wrong, it gives you the avenue to fix it without actually going back and fixing the act. You have an authority in regulation to provide greater certainty to businesses and councils, and I think having that option is worthwhile.

**Hon Mr Philip:** Let me suggest to you that what you are proposing gives greater uncertainty to businesses, because while putting in "as defined in the regulations" would allow a provincial government to define it very narrowly, that same provincial government, via regulation, overreacting perhaps to one or two very serious incidents in which somebody was killed or something, could define so narrowly that it could be open to considerable problems with legitimate businesses.

I'm suggesting to you that municipalities know their community. We have to have some faith in local municipalities in using this in a reasonable way. I have the faith in the municipal leaders that I've had to deal with as minister, and I want to trust their judgement and not simply hold that power at a provincial level, either by myself or by any future minister who may hold this position and who may be affected by the latest news headline of the day, tragic as that news headline might be. I think it's common sense. Municipalities can interpret this.

**Mr Murphy:** I've got to respond briefly to that. It's hardly a point of not trusting municipal officials, quite the opposite. In fact what we are saying to them is, they are going to make the judgements in a series of applications and we are giving them the power to make the judgements. We are agreeing with giving them the power to make that judgement and we are saying that what we want to do is make sure that the policies across the province are consistent and that they have some guidance in what is meant. Municipalities repeatedly say, "You dump this load of stuff on us, and you never tell us what you want and you make us work it out and you make us pay for it," because the municipalities are going to have to pay for this, defining what that means.

I have every faith in the elected officials at the municipal level, and I have every faith that together, if we give them sufficient guidance, they can then exercise their discretion and common sense in individual circumstances

for the benefit of their community.

**Hon Mr Philip:** This is what they are asking for.

**Mr David Johnson:** When the minister says this is what they're asking for, I think they'd be quite happy with the bill with this amendment.

I find a couple of things interesting. Generally the government wants to put as much in regulations as it can. We've seen this over and over again, that the regulations have been used to a great extent in many bills, and here we are suggesting the opportunity to define words that obviously, from the deputations today, just about from all sides, there's a lack of clarity as to what the definition is going to be. We're offering the government that opportunity, but I guess it's come from the wrong source.

Secondly, it's interesting how people can use exactly the same words to describe diametrically opposite situations.

**Hon Mr Philip:** And I'm not even a lawyer.

**Mr David Johnson:** When the words "overly centralized" and "bureaucratic" are used, it's interesting that the deputants who have appeared before us today I think are trying to avoid that situation in suggesting that this phraseology have some more definition to it. They're trying to avoid an overly bureaucratic and centralized kind of system by putting more definition to it. But you use the same words no matter if you're describing this or if you're describing that. As long as you use the same words, it sounds great. Who knows what the meaning is?

The one example that was raised today, for example, I don't think the municipalities would be anxious or intending to close down a store if it was a couple of weeks behind in property tax. That was one issue that was raised today. But there is concern that if the words remain the way they are today, the interpretation could well be that there's a lack of honesty or a lack of integrity or something because the person hasn't paid their property tax for a couple of weeks and this clause could be invoked. I don't think municipalities would be intending to do that, and I don't think they would be the least bit disturbed if a definition in the regulations precluded that kind of situation.

It's been stated throughout here that what happens must be relevant to the liquor business, and I've heard that previously today. I guess at one point, maybe the minister in his response—I'm sure he'll be responding—would point to me the words—are they contained in this act or are they contained in the main act?—that indicate that the actions that are taken under this section must be relevant to this particular business. I'd appreciate having that point.

Maybe I should just stop there and let—

**Hon Mr Philip:** I'd be happy to. If you look at section 2, clause 109.1(5)(a)—it's on page 2. Do you see the little (a)? "The conduct of the applicant or licensee affords reasonable grounds for belief that the applicant or licensee will not carry on the trade, calling, business or occupation in accordance with the law or with honesty and integrity."

**Mr David Johnson:** All right. I see that, but—

**Hon Mr Philip:** It's basically dealing with carrying



on that business, not carrying on some other business.

1710

**Mr David Johnson:** But surely there are at least two different ways of interpreting that clause. Is the minister or the staff telling me that somebody couldn't separate the "or with honesty and integrity" from the rest of that clause and those words couldn't be applied on a broader basis? Could you not find a lawyer who would argue that particular case? I'd be surprised if you couldn't.

**Mr Murphy:** Yes. I could.

**Mr David Johnson:** There's one right here. We found one. We didn't have to look very far.

**Hon Mr Philip:** But he comes cheap, though.

**Mr David Johnson:** I see silence at the end of the table. I don't think that's clear, if that's what this whole thing hangs on. I'm not a lawyer, but I don't think that's clear, and that's what, for example, the restaurant association is saying. Yes, I think they would agree it should be relevant to the business, but I don't believe just that phraseology makes it clear.

Secondly, and this point has been made but I'd like to make it again, and it was made this morning by at least one deputant, maybe two, to force small business people to go to the courts to sort this out is—surely we would all agree that that's not the right way to proceed. Small businessmen can't afford high-priced legal help to sort this kind of stuff out, and my guess is they're somewhat intimidated by that at any rate. They haven't got the time. Most of them are hanging on with their fingernails in terms of their cost structure. They can't afford it. They haven't got the time to do it. Surely we should set in place something that doesn't require the courts to sort this out.

I think, again, that gets back to a definition that does away with as much of the bureaucracy as possible by limiting the scope of what's intended, and I think the municipalities would be very happy with that as well.

**Hon Mr Philip:** The first hearing is held at the municipal level, and to suggest that somehow municipalities are going to want to somehow capriciously abuse their power in order to do something to some businessperson, who's a voter and a constituent of theirs, without proper cause is saying that you've got some pretty weird people elected. And that's a possibility. Maybe you had some of those on your council. I don't know.

I see that your lawyer is leaving for a minute, but I'll have my lawyer respond to him if you'd like.

**Mr McClelland:** You said he comes cheap, so he left.

**Mr Melville:** You were asking about whether this could be interpreted in a way so that the "or" was disjunctive and that somehow conduct would be interpreted in a way that would allow for the revocation of a licence where there was no relationship of the conduct to the business.

I don't think anyone can guarantee that a lawyer might not argue anything at any time. I would certainly concede that point. But in terms of the success of the argument, or the reasonableness of the argument, I can only point out that the words themselves suggest that the conduct must

somehow be related to the business.

Secondly, in the past interpretation of municipal law generally by the courts, the courts have in fact acted as watchdogs and have interpreted statutes in a manner that would, with respect to licensing decisions, require that a decision be based on the business activities of the business and not go into such broader things, for example, as the lack of popularity of the business with the surrounding neighbourhood and so forth.

**Mr David Johnson:** Well, let me ask you this: In the case of the point that was made this morning, is the property tax of a business relevant or associated with that business such that it could be interpreted by this clause? It seems to me that the property tax of a business is very relevant to a business, or associated with a business.

**Mr Melville:** I'm not sure quite how to respond to that. I can try, if you wish.

**Mr David Johnson:** Please.

**Mr Melville:** With respect to property taxes of a municipality, I'm not aware that non-payment of property taxes as such is an offence. It would seem that perhaps the non-payment of property tax, of municipal taxes, might be evidence that would be considered by a tribunal. But given the number of mechanisms that are available for collection of a property tax elsewhere in the Municipal Act, which I'm sure you're aware of, in terms of liens, distress—liens on property, I should say—right of action, and the fact that it is not an offence, it would seem to me that that kind of evidence would carry less weight than some kind of violation of statute or law.

**Mr David Johnson:** All right. Just to follow up on that, this clause, as I understand it, does not indicate that an offence has to be perpetrated. It hangs around the words "honesty and integrity," and not all dishonest people perpetrate offences, I don't think, necessarily. You can be dishonest without creating an offence. So I'm not so sure what the relevance of the offence is.

What has been asked today is, if the property tax is in arrears by a couple of weeks, the property tax which pertains to this particular business, which is very relevant to this particular business, could it be perceived that the owner or the businessperson would run afoul of the honesty and integrity section, was less than honest or less than having integrity to match up with this clause—and there's no offence created, but it doesn't call for an offence—and therefore this section would be invoked?

**Mr Melville:** I think I've answered the question in the sense that yes, the lack of payment of taxes might be considered relevant in the decision, but in the context that the tribunal has, where it may be considering other evidence, such as drug trafficking on the premises or a serious criminal conviction of the licensee, such evidence would be given greater weight in the decision. I can't answer further than that.

**Mr David Johnson:** I guess you would say it's possible but not likely.

**Mr Melville:** In some, yes.

**Mr Murphy:** You're good. He's a natural.

**Mr Marchese:** Just a few quick statements: I do want to say that I understand the concerns the restaurant



association has raised, and that if used in the extreme or injudiciously or unscrupulously, that would be a problem, and I understand the efforts both the opposition members are trying to make with this.

I should point out, however, that when regularly in committees the government says "as defined in the regulation," the opposition usually goes up in arms and says: "That's a problem. We don't know what the government's going to do. We want to see it. They're not going to bring it back. It can change." I understand your intent, however, nevertheless. I wanted to point it out, that I do understand the intent of what you're getting at.

The point is that nobody wants to shut down businesses. We don't want to do that. Municipalities don't want to do that, because when you do that people are laid off, they're not working, they don't pay taxes, and that's a problem. That's why we don't see too many convictions in general.

But I think the purpose is that we want to deal with the unscrupulous operators, and we think this is a fair way to get it.

"Public interest" is something we avoided because it's much worse, and the restaurant association agrees that would be a problem because "public interest" could be defined in any which way a community wants. That would be a problem for restaurants because any community can come up and complain about anything, and then they'd be in trouble. So we've ruled that out.

But we feel that if you establish something that's prescriptive, as the minister said, that would be a problem. I know Mr Murphy wasn't saying prescribe; provide guidelines. The problem with guidelines is that you can never really get to all of the situations, even with guidelines. So I'm not entirely sure that even if you had guidelines, we're any farther ahead with that, versus the "honesty and integrity" language that we have here. I really think this language is a balanced approach between keeping the interests of business and the public in a very effective way. So I think in spite of the concerns raised, this will do it.

1720

**Mr Drummond White (Durham Centre):** I'm actually rather concerned that we seem to be taking a lot of time arguing about what's honesty and integrity, something which most of us seem to have some cognizance of. My friend speaks about this being an issue that would be before the courts and that lawyers would want to argue. I'm not sure that other groups or professions would necessarily find an interest in that.

This is a direction, this is a guideline, and the fact that lawyers have difficulty understanding what honesty and integrity are is irrelevant to this issue, because it's the council that would make that decision.

These are issues that I think are very, very important. We have a limited amount of time to debate this thing and I hope that we can move on.

I don't think it makes a great deal of common sense to define issues like honesty and integrity in regulations, when those are words which have a great deal of common usage already. I hope that we can move on with this,

and my colleagues opposite, I'm sure, would have equal concern because I know that I've seen on the television how this is a concern for members of the opposition. Why, just last weekend I saw that the Leader of the Opposition was running on this very bill, so I'm sure that she wouldn't want it to fail.

**Mr Wiseman:** I just have a really quick question to the minister and that is, if this change is made to the wording, to "as defined in the regulations," will that lead to more regulations and an unlimited appeal to the cabinet to make more regulations and change, so that every contingency would have to be covered and that if somebody missed one, it would take a new regulation in order to do it?

**Hon Mr Philip:** That's one of the downsides. Another of the downsides is that a government could at any time simply decide to submit to the mood of the day and either completely open it up or completely tighten it up and make it too tight. I think that local councils are in the best position to make good decisions.

**Mr Wiseman:** I'm happy now. Let's vote.

**The Chair:** Is there any further discussion before we take the vote? All those in favour of Mr Johnson's motion, as amended? All those opposed? The motion is lost.

**Mr Murphy:** I want to ask a question about subsection 109.1(4).

**The Chair:** Oh, you want to go back.

**Mr Murphy:** I raised it initially as a concern only because I, off the top of my head, didn't know the answer, so now that I have the people here who do, I want to ask it. My concern is this: This sets up a new section in the Municipal Act. There are some sections of the current Municipal Act repealed, but one of the sections you leave is the provision that says this doesn't change any powers under section 214, which is the provision for hours of operation for establishments.

My only question is that the wording in that section, which I think is subsection 109.1(5) of the Municipal Act, says that despite anything in this subsection or section, you can't do that, and this creates a new section which appears in subsection 109.1(4) to give a power to prescribe hours of operation, despite what section 214 says. My concern is that you could end up having a council that was the decision-maker that didn't have—a commission or something—but you could have a council that decided as a matter of course it was going to have a policy where the official closing hour was 10 pm and applied that as a condition of each licence.

**Hon Mr Philip:** No, you couldn't, because they would have to in fact have a reason for imposing the condition, and the condition would have to be that the operator—not the class of operators but the individual operator of the business—was not operating that business with integrity. So it's specific to a business and it's specific to the person who owns or operates that business not operating it in a way that is in keeping with the integrity of the business.

**Mr Murphy:** No, and I understand that argument, except that my concern is that subsection 109.1(5), which

we've just dealt with, reads a bit disjunctively on that, because it says, "The exercise of a power...in the discretion of the council or police services board and, without limiting such discretion," provides then that those conditions relating to the applicant apply. So you've give a broad discretion and while you say it applies in a certain circumstance, it's done without limiting that discretion. So you still have quite a broad discretion given to the council under, whatever it is, subsection (3) and have given it the power to restrict the hours of operation. So my concern is that we might be giving a little more than we thought we'd been giving.

**Hon Mr Philip:** We haven't changed the discretion, but I can have counsel respond.

**Mr Murphy:** Sure, please. I just want the answer.

**Mr Melville:** Fair enough. The discretion that we've given under the new Bill 198 merely reflects the existing discretion that municipal licence decision-makers have.

In terms of your question about hours, the existing 109(3) essentially is the one that you're talking about. That's a power to set classes of hours for classes of shops, beyond the regular bylaw-making power for that purpose. The new subsection (4) of 109.1, as the minister indicated, is a power that can be imposed on an individual basis after a hearing, after evidence is introduced and so forth, that would be applicable to the individual licence-holder.

**Mr Murphy:** I'm just trying to work this through so that I'm satisfied in my own mind, which may take a long time. Because the wording of subsection (2) is, when an applicant comes up, the council or police services board can impose a condition on the applicant. At least, just in (2) alone, that's an unfettered discretion of the council to impose a condition.

**Mr Melville:** That's correct.

**Mr Murphy:** Period, full stop, regardless of any history of the applicant. Then you go to subsection (5) which appears to limit that discretion, but in my reading of it actually, I don't think it does fully limit that discretion, because it does say, "without limiting such discretion" these conditions apply.

**Mr Melville:** Yes, that is correct. It was necessary to do that in order to preserve the existing law that applies with respect to the exercise of discretion by municipal licence decision-makers. So this is an additional power.

**Mr Murphy:** All right. So does, then, sub (2), in granting as broad a power as it seems to, add to existing council powers? Clearly, it does.

**Mr Melville:** Yes, it does. That's the purpose of the legislation.

**Mr Murphy:** My concern, then, to go back to sub (4), is that it gives an authority for the council to do that. Now it says, "despite a bylaw." My only question is this: There's that saving section in subsection 109(3), the old one, which says that any provision, any whatever it is that a council can do, can't change what's under section 214. My question is, I'm not sure, because of the very wording of that subsection, the old (3) in 109, applies to this subsection and therefore may not save the power you're giving under what is now a new section, which is

190.1. In other words, that sub (3) may not be broadly drafted enough to cover the new powers you've given here.

**Mr Melville:** With respect, I think they're different powers, though. The 109(3) that exists now essentially is a power to restrict hours on a class basis for the classes of different businesses. The power to restrict hours in subsection 109.1(4), as the minister indicated, is a power that may be exercised on an individual basis after a hearing, which is required by subsection 109.1(7). To that extent, I can answer your question.

1730

**Hon Mr Philip:** I perhaps should have done this earlier, but I'd like to table a letter received from Bill Mickle, the president of the Association of Municipalities of Ontario, strongly supporting the bill as written. Perhaps it can be tabled and provided to members.

**The Chair:** Thank you, Mr Philip.

With respect to section 2, we have a government motion.

**Mr Marchese:** I move that subsection 109.1(7) of the Municipal Act, as set out in section 2 of the bill, be struck out and the following substituted:

"Review

"(7) A council or police services board may at any time on its own initiative review any action taken by it under subsection (2) and may confirm or vary such action.

"Same

"(7.1) Subject to subsection (7.2), a council or police services board shall, at the request of a licensee, review any condition imposed by it under clause (2)(d) and may confirm, vary or remove the condition.

"Limitation

"(7.2) A council or police services board shall not review a condition under subsection (7.1) if the request is made before the condition has been in place for one year.

"Opportunity to be heard required

"(7.3) A council or police services board shall not exercise its powers under clause (2)(b), (c) or (d) or subsection (7) or (7.1) except after giving the applicant or licensee an opportunity to be heard."

**Hon Mr Philip:** The purpose of this is to respond to the concern, which certainly impressed us, from the Ontario Restaurant Association that perhaps we were being a little bit overly prescriptive, that we should give some flexibility that where someone has had certain restrictions put on their licence, where they can demonstrate perhaps that they've cleaned up their act and that they're going to behave in a way which is responsible, the restrictions can be changed. So we're trying to build in some of the flexibility that the Ontario Restaurant Association requested in item 5 of its presentation.

**Mr Murphy:** I will support this amendment. It covers one of the amendments that I was going to move, which was the application for a review after one year, so I'm glad to see that's in there.

My one proviso is this, and perhaps the minister or the



ministry can answer this: I think probably the Statutory Powers Procedure Act applies to this, and I'm just wondering (a) if I'm right on that and (b) what it says about notice of a hearing and written reasons to be provided to applicants or the subjects of the hearing, if you know that.

**Hon Mr Philip:** The applicant can apply for written reasons as exercised under the Statutory Powers Procedure Act. Suppose, for example, that you're representing a restaurant owner or a doughnut shop or whatever and you wish to appeal it to court. Then, of course, you can request it, and I believe they have 18 days, is it, in which to provide—

**Mr Melville:** I'm not sure about the number of days required for an appeal to court. I just would say that's in accordance with the ordinary rules of court.

In terms of the question about the Statutory Powers Procedure Act, the wording in Bill 198 parallels the wording in the Statutory Powers Procedure Act in that reasons may be provided upon request.

**Mr Murphy:** Where is that now? That's sub (8), right? Okay. That's fine.

My question then comes back just to the notice provision. In fact the amendment we wanted to move would provide a 14-day notice period, and my only question is specifically this: not the court procedures, but what the Statutory Powers Procedure Act would obligate a municipal council or a police services board, whatever the body is that's going to have the hearing, to do in terms of providing a minimum notice period to whomever is going to be the subject of the meeting. Obviously, you want to have time for them to engage a lawyer and my thought was that 14 days would be sufficient notice. If it's already covered in another statute then we don't need to, and that's just what I want to confirm from you.

**Mr Melville:** In response to that question, the Statutory Powers Procedure Act, which would apply, does not provide a specified period of notice. It provides for "reasonable notice" in section 6 of that act, which I have before me. It also provides, you may be interested, in section 8 that "where the good character, propriety of conduct or competence of a party is an issue in a proceeding, the party is entitled to be furnished prior to the hearing with reasonable information of any allegations with respect thereto."

**Hon Mr Philip:** If I may just add, this again is one of those instances where we had to weigh and add some balance. There were certain municipalities that were wanting the power to simply close down an operation until such time as a hearing was held. We thought that was excessive and we felt that municipalities could call a hearing in a reasonably short period of time, namely a day or two, if they wished, and they in fact have that power now.

We thought, therefore, that putting in the requirement that there be a hearing—but at the same time, you don't want somebody who's doing a whole bunch of things that are really very, very shocking to a community to be able to stay open for another 14 days waiting for that hearing. So it was a balance between simply putting the padlock

on the door immediately or forcing the municipality to quickly call a hearing and then act. That's the balance we chose.

**Mr Murphy:** Still a lot of flexibility.

**Hon Mr Philip:** Still lots of flexibility.

**The Chair:** Any further discussion on the motion? Seeing none, all those in favour of the government motion? All those opposed? Carried.

That brings us to the PC motion, Mr Johnson.

**Mr David Johnson:** I move that section 2 of the bill, section 109.1 of the Municipal Act, be amended by adding the following subsection:

"(7)(a) A council or police services board shall not exercise its powers under clause (2)(b), (c) or (d) in the case where a licensee or owner is not knowingly aware of the illegal activities of his employees, clients or customers, the licensee will not be held responsible or liable for any act or acts undertaken by such employees, clients or customers."

Obviously, this would prevent owners who are not involved in illegal activities—and drug dealing has been raised here in many cases today—who are not aware of such activity among their staff or clients, from losing their business licence under the Municipal Act, but it would not deal with offences under the Liquor Licence Act such as serving alcohol after hours, serving a minor or serving an intoxicated client. It's obviously a little difficult to define, but I think the point was made by at least a couple of deputations this morning that there would be a variety of situations that one would encounter.

In some cases the owners could be quite knowledgeable about what's happening and perhaps by their inaction may be contributing to the problems. But obviously there are going to be a number of cases, depending on the severity of the activity, where the owner would not be knowledgeable about what is happening, either if it's happening through clients or in some cases it could even be staff, and for someone in that position to suffer what may be extreme consequences, including up to, I guess, losing their licence, would not seem to be fair. So this amendment, specifically suggested by the Ontario Restaurant Association, is put forward to address that situation.

1740

**Hon Mr Philip:** Let me respond to you again. What we had to deal with was, I guess, a compromise. One proposal that I refused was the powers to put a lien on the property. I felt that simply because you happen to be a landlord and rent your premises out to somebody who is running a doughnut shop is no reason why you would necessarily know that the person who rented your property was going to do something that was inappropriate to the community.

The other proposal was again that we use public interest and I thought that criterion was far too broad and could very well be used to hurt a proprietor whose clients might be performing activities outside the licensee's control and that might be objectionable for cultural or other reasons to some members of that community.

Therefore, I think what you have is the same kind of criteria that are used under other statutes, such as the Liquor Licence Act, and we feel this is the proper balance.

**Mr David Johnson:** I think the point has been made. I don't know what more I can say, I guess. There are different points along the balance that we are all looking at. I would hope that no one here would condone a situation.

When we think of landlords, we think perhaps of absentee landlords, but it could be somebody actually owning property and working there, managing the property, having staff or just simply having customers—could be taking some steps, but depending on where an establishment is located, if it's in a difficult part of town, then may be up against a severe situation, a difficult situation to address, for an individual like that, a small business person perhaps, to be caught in this web and suffer circumstances.

I know it's not easy to define this situation. I'm not even totally convinced myself that what's here is workable. But still, surely we would not want to close somebody down, an innocent small business person who may even be taking steps to address the situation.

**Hon Mr Philip:** You forget, though, that the onus is for the municipality to show to the tribunal that this person is not operating with integrity. He would have as his or her defence that if there had been a whole bunch of illegal activities of which he was the victim or an innocent bystander, no doubt he would have reported these to the police or tried to take some action, because there is an onus on a proprietor not to allow illegal activities to happen in his premises, in the same way that you and I have some onus to make sure that people are not becoming inebriated in our homes so they can't drive, or that they're not bringing stolen goods into our homes.

The same onus holds true then to a shopkeeper and you would have to be able to connect him or her with the activity that is illegal or inappropriate.

**Mr David Johnson:** He may be aware of the activity; he may not be aware of the activity. He may have taken steps that, in the decision of a court, I guess, in the view of a court, may or may not be significant enough to qualify as being honest and with integrity. I don't know. I think we've gone through this business that small business people will not look with great regard in going through a court process to have their future determined, and somebody defining what is honest and with integrity.

It seems to me to be a potential for being a very cumbersome process and I think it's quite easy to perceive of instances where somebody could be caught in this net, some person we would probably all agree, if he or she appeared before us and told us the circumstances, we'd say that person is innocent and should not be subject to having their licence revoked, for example, or something of that nature. That's all I'm simply trying to address and, frankly, I don't think it is fully addressed in the bill, no matter what balance we claim to have.

**Hon Mr Philip:** You and I are both concerned about small business people. I'm concerned about the small

business person in my riding who's losing business in his store because there's some fellow who's operating in a way that's completely inappropriate to that community, inappropriate to that mall, and the other merchants in the mall are being the victims of what's going on in the mall. I guess that's where my discretion and my concern for honest business people lies. I think there are enough safeguards built into this with the tribunal, with the criteria of honesty and integrity and with the right to have an appeal to the court, that I'd like to protect the law-abiding business people in those malls who are affected and are losing business by those who have less integrity than they do.

**Mr David Johnson:** This amendment is clearly not aimed at people who are operating outside of the law, or people who are affecting, by operating outside of the law, adjacent businesses or concerns. It's clearly not aimed at that situation. I fail to identify with the words the minister has just said. It's aimed at the small business person who is caught in a net, who's been innocent. Apparently, this bill gives authority for him, unknowing in certain circumstances, to have his licence revoked, for example.

**Hon Mr Philip:** The only response I can give is that if we make this act inconsistent with other acts, it weakens the case of the municipalities in the courts to deal with people, then, who are not operating with integrity. I'm not prepared to weaken the powers of the municipality to that extent.

**Mr Marchese:** Just a quick comment: I agree with the minister and would add another comment to it. I think Mr Johnson wants to make explicit what I think is already implicit in the bill. For example, on page 3 of the bill, section 4, it says, "Where an owner is convicted of knowingly carrying on or engaging in a trade, calling, business or occupation on, in or in respect of any premises or part of any premises without a licence...be closed to any use...."

Implicitly there it says that if the owner is not involved, then it's not a problem, but where he knowingly is carrying on or engaging in illicit or illegal activity, that's a problem for the owner. I think it's implicit in this act without having to necessarily say what Mr Johnson is saying, although I understand what he's getting at.

**The Chair:** I'll put the question: Shall Mr Johnson's motion carry? All those in favour? All those opposed? The motion is lost.

That brings us to a Liberal motion. Mr Murphy.

**Mr Murphy:** No, that's fine.

**Hon Mr Philip:** We've covered his motion.

**The Chair:** You had more than one motion, Mr Murphy.

**Mr Murphy:** No, I'm fine, because two of them were dealt with by virtue of the application of the government motion, one by the statutory powers, and it's pretty clear that my 14-day motion won't pass.

**The Chair:** Okay. I'm clear, as I'm sure all the members are, with respect to that.

Shall section 2, as amended, carry?



All those in favour? Opposed? Carried.

The Chair at this time would like to move expeditiously. If there are any concerns with respect to any sections of the bill, then I would ask members to raise them at this time.

**Mr Murphy:** Just jump straight to section 6 of the act, the amendment to the—

**The Chair:** Okay, then, if you'll just bear with me for a minute. Mr Johnson.

**Mr David Johnson:** Section 4.

**The Chair:** Shall section 3 carry?

All those in favour? Carried.

**Mr David Johnson:** In section 4 the very brief discussion we had with the Metropolitan Toronto Police raised a couple of issues, and obviously they're not going to be able to be addressed. They seem important to me and I guess we can at least get some response from the government on it. They're dealing with subsection 34.1(1), and specifically they say there is no offence section. This is on page 7. "We would like to see an offence section for failing to comply with an order to vacate."

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**The Chair:** I'd like to bring to your attention that that's section 14.

**Mr David Johnson:** Oh, I'm sorry. I'm talking part IV rather than section 4. I'm all the way to part IV.

**The Chair:** If you could just wait for a second then.

**Mr David Johnson:** I'll wait.

**The Chair:** Shall section 4 carry? All those in favour? Carried.

Shall section 5 carry? Carried.

Shall section 6 carry? Mr Murphy wants to raise a question here.

**Mr Murphy:** Just if I can, briefly, to the minister and the ministry: We have a letter from the mayor of the city of Toronto in which she expresses a concern. I don't know whether you've seen it or have it in front of you or filed it as an exhibit. Her basic point is this. She says:

"I am recommending that [this section] be amended to require the licensing commission to hold a hearing into an alleged contravention of the bylaw upon receipt of a resolution from the council of the area municipality, rather than simply investigate."

She wants an obligation that there be a reporting back. I'm just wondering if the ministry and the minister could respond to that suggestion.

**Hon Mr Philip:** We thought that the provision which allows the lower tier to pass a resolution requiring the licensing commission at the upper tier to investigate was as far as we wanted to go. Forcing them to hold a hearing was—we think there's considerable political persuasion there that if there's evidence following the investigation that they will want to hold a hearing. It's not necessary, then, to go quite that far.

It's also important, when you have a tribunal, for it not to have the political interference in the operation of that tribunal and therefore we thought that we had hit the

balance between allowing political interference and allowing the local municipality to suggest that at least the matter should be investigated.

**Mr Murphy:** If I can understand you correctly—and I think I know where you're going and I may agree with you—the bottom line is: what you don't want to do is limit the discretion of the licensing commission. In other words, you say, "You have to conduct an investigation." Once they conduct an investigation they have the authority to decide whether that requires a hearing or not and that is within their authority and that's appropriately done so. All right, thank you.

**The Chair:** Further discussion? Seeing none, shall section 6 carry? Carried.

Shall sections 7 through 13, inclusive, carry? Carried.

With respect to section 14, Mr Johnson.

**Mr David Johnson:** I've already said my intro to it so the rest of it is that, as I understand it, this section would give some authority: If there are reasonable grounds then people can be required to vacate the premises. However, I think what the police are saying is that there is no offence created for failing to comply with the order to vacate. I don't know who can respond to that.

**Hon Mr Philip:** We'll have to get people from the Solicitor General's ministry to respond.

**The Chair:** Are there people from the Solicitor General? Okay.

**Ms Wise:** Could you repeat the question, please.

**Mr David Johnson:** The Metropolitan Toronto Police have indicated they would like an offence section. We're looking at section 14. In other words, they have the authority under certain grounds to force the premise to be vacated but I gather, in police parlance, there is nothing to create an offence if somebody fails to comply with the order to vacate.

**Mrs Karen Haslam (Perth):** Actually, I share the concerns and when I asked the question the question was not that they didn't have the authority but that they wanted it written out more because if you're facing 1,800 people, you want to be—

**Mr David Johnson:** I think that comes under "force." That's the next question, I believe.

**Mrs Haslam:** Okay, that's mine.

**Mr David Johnson:** Are you with us? That was their deputation. They actually read that out. What happens if people fail to vacate when the police order them to vacate?

**Ms Wise:** Under the new bill, there is not an offence section, a new offence created for refusal to comply with the requirement to vacate. I guess, in order to address your question, there is perhaps a criminal law power in terms of obstructing police that is available to the police, but under this bill a new offence is not being created in that regard.

**Mr David Johnson:** Is that something that would normally be there? From the way you're describing it, by the look on your face, there's something maybe here that's been missed.

**Ms Wise:** No.

**Mr David Johnson:** Am I interpreting too much?

**Ms Wise:** No. In terms of the second part of your question, the use-of-force aspect that the police raised in their submission, there is a provision under the Provincial Offences Act which permits police to use as much force as necessary to do what an officer is required to do or is authorized to do by law.

**Mr David Johnson:** They admit that. They say, "However, an officer on the street, for simplification and speed of research"—whatever that means—"would like to have that authority spelled out in the act itself." I think they're saying that it would be quicker, more efficient. If the purpose of this is to deal with this problem, then it should be outlined in this act.

**Ms Wise:** I would suggest that the police have powers from various sources and that it may well not be appropriate to incorporate all the powers of the police in this particular statute. There are powers available under the criminal law, there are powers that are available under other provincial statutes, and in particular the Provincial Offences Act, that may not be appropriately transferred into the Liquor Licence Act.

**Mr David Johnson:** Do you have any objection—since we've had this discussion and I guess it's too late now—but if we had more time, would you have had any objection to putting an offence section into the act for failure to comply with vacating the premises?

**Mr Murphy:** Someone is saying over here it already exists.

**Mr David Johnson:** I heard that, but the way you described it made it sound as if it was somewhat not as speedy or as direct, let's say, as what the police are asking for.

**Mrs Haslam:** They have to go to a criminal court in order to apply for other legislation, and what they want in this legislation is it laid out in fines so that it doesn't have to go through the criminal courts. My understanding is that it's already there in other legislation to go through the criminal courts.

**Mr David Johnson:** All right. I raised that issue. The only other issue I raise is the inability to collect fines that they've noted, as well, since you're there. I think they would like to be able to seize goods for non-payment of fines. Is there some reason why that wasn't included?

**Ms Wise:** I'm not prepared, unfortunately, to address that issue.

**Hon Mr Philip:** I'm sorry, Mr Johnson, I didn't understand you. They do have the power to seize chattels for non-payment of fines.

**Mr David Johnson:** Why do they think they don't then? "Inability to collect fines" is "noted under new section 330.1 of the Municipal Act which allows for seizure or distress for goods or chattels on non-payment of fines."

**Mr Murphy:** Under the Provincial Offences Act.

**Hon Mr Philip:** Except that this gives them more power. They can actually walk in and seize the chattel immediately.

**Mr Cordiano:** So they can walk in right on the premises and seize.

**Hon Mr Philip:** It applies to violation of municipal bylaws. It applies to non-payment of fines resulting from the enforcement of this act.

**Mr David Johnson:** I raised the concerns of the police. I object to the fact this whole thing is sort of time allocated. We've got no time to deal with these problems. They're valid concerns. That's all I can do.

**Mr Murphy:** I too want to echo the concerns of the police related to subsection 34.1(1). I think an offence section would help. I would think something that corrects the problem with the Provincial Offences Act would help.

My one further question is the concern about needing ID for a special occasion permit. I think that makes sense, actually.

**Hon Mr Philip:** The Ministry of Consumer and Commercial Relations, when I asked them that question, said that the imposing on ordinary citizens and indeed the cost to the bureaucracy and the inconvenience when we have a decentralized system would be just phenomenal. Perhaps there's somebody here from Comsoc who would like to respond.

**Ms Lynne Bertolini:** I'm Lynne Bertolini from Consumer and Commercial Relations. We have just filed a new regulation under the Liquor Licence Act that requires photo identification on request for applicants who are applying for SOPs. We have a list of refuse-to-issue and red-flagged premises, as well as individuals, and if there's any concern about the application, the person issuing the SOP can ask for photo identification.

**Mr Murphy:** Can you make sure that you tell all your offices that too, as soon as possible? Just communicate it to them.

**The Chair:** We're leaving it as discretionary.

**Mr Marchese:** I would move the rest of the sections, Mr Chair.

**The Chair:** Shall section 14 through section 20 carry? Carried.

Shall the title carry? Carried.

Shall the bill as amended carry? Carried.

Shall I report Bill 198, An Act to amend the Liquor Licence Act, the Municipal Act and the Regional Municipalities Act and certain other statutes related to upper tier municipalities, as amended, to the House? Agreed.

**Hon Mr Philip:** May I thank all of you and the staff of all three ministries and the other two ministers and particularly Rosario Marchese for everything that he's done.

**The Chair:** This committee stands adjourned until the call of the Chair.

*The committee adjourned at 1801.*



## STANDING COMMITTEE ON FINANCE AND ECONOMIC AFFAIRS

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*\*In attendance / présents*

### **Substitutions present/ Membres remplaçants présents:**

Cordiano, Joseph (Lawrence L) for Mr Kwinter

Duignan, Noel (Halton North/-Nord ND) for Mr Jamison

Marchese, Rosario (Fort York ND) for Mr Lessard

McClelland, Carman (Brampton North/-Nord L) for Mrs Caplan

Mills, Gordon (Durham East/-Est ND) for Mr Abel

Murphy, Tim (St George-St David L) for Mr Phillips

White, Drummond (Durham Centre ND) for Mr Sutherland

### **Also taking part / Autres participants et participantes:**

Grandmaître, Bernard (Ottawa East/-Est L)

Ministry of Consumer and Commercial Relations:

Bertolini, Lynne, senior policy analyst, agency relations branch

Wise, Beverly, legal counsel

Ministry of Municipal Affairs:

Philip, Hon Ed, minister

Melville, Tom, legal counsel

**Clerk / Greffière:** Mellor, Lynn

**Staff / Personnel:** Yurkow, Russell, legislative counsel

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